

Message

From: Leydon, Karen [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=LEYDON, KARENEB3]
Sent: 7/16/2019 12:25:31 PM
To: * All Supervisors CFTC Wide [/O=CFTC/OU=Washington, DC/cn=Recipients/cn=*AllSupervisorsCFTCWide]
CC: Smith, Patricia [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Smith, Patricia7ab]; Snipes, Deborah [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Snipes, Deborah7b7]
Subject: Performance Year-End Reminder Dates
Attachments: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections-- Updated Legal Requirements

All,

Close-out activities for this year's performance ratings will be a little different due to the Performance Management and Pay reform initiative, the information below provides key dates, instructions for completing ratings, and establishing goals and expectations for the new cycle.

2018-19 Performance Cycle ended June 30, 2019

To begin the conversion to a fiscal-year performance rating cycle, the current cycle was extended by 2 months and ended in June. To complete this rating cycle:

- Use the 5-level assessment form currently in PMP to prepare ratings.
- Use employee input (e.g., accomplishment reports) when available.
- Obtain Reviewing Official approval before communicating ratings.
- Update the automated PMP system by August 1st with performance data on the summary ratings, narratives, and annual review meetings. Narratives should be thorough and sufficiently support the rating levels assigned.
- Submit completed assessments to HRB, Patti Smith or Debbie Snipes, Room 4124 4th Floor by August 15th.

New employees on board April 1, 2019 are eligible for merit pay this rating cycle. Please rate their performance based on the last 90 days of the rating cycle (April 1 to June 30, 2019.) An employee on board April 2nd or later will be rated next year. An employee promoted to a supervisory position on April 2nd or later, will be rated on non-supervisory duties this year and on supervisory duties next year.

Special Circumstances for Employees Changing Positions:

A performance rating should be prepared by the gaining supervisor (with input from the former supervisor) in the following cases:

- A non-supervisory employee who changes jobs (e.g., promotion, temporary promotion, detail, or reassignment) effective April 1.
- A supervisor who changes jobs (e.g., promotion, temp promotion, detail, reassignment) effective April 1.

Pay Pools:

Each pay pool will be funded with a merit pay increase of up to 3%. Merit pay will be processed in September but retroactive to pay period 14 (July 7-20, 2019), and paid on or about September 23, 2019.

2019-20 Performance Cycle began on July 1st and ends on June 30, 2020.

Schedule time with each employee to establish goals and expectations for the new cycle, no later than August 15th.

- Begin using the interim two-level rating system with the Interim Assessment Form . (The form will be available in PMP once the 2018/19 cycle is closed out). We will continue to use 5 performance elements for employees and 7 performance elements for supervisors. Element 7: Coaching, Motivating and Developing Staff has been modified to include evaluation of supervisory responsibilities related to employee protected disclosures (e.g., Whistleblower Complaints). For more information refer to the attached e-mail.
- After goals and expectations have been established, complete Section II of the form. Enter this data in PMP once the form is available.
- Since each performance element is critical, a rating of “U” “Unsatisfactory” on any element will result in an overall summary rating of Unsatisfactory. This is similar to the current system for any element rated a “1” unacceptable. The Commission’s policies on handling poor performance and reconsideration requests have not changed.
- Contact Workforce Relations for any performance concerns.
- **Additional Resources:** Are available on CFTC.net under Performance Management Toolkit

Thank you for your continued cooperation and commitment to performance management and pay reform. If you have any questions, please let me know or you can contact the Workforce Relations.

Regards,
Karen

Message

From: Giancarlo, Chris [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GIANCARLO, CHRIS2A4]
Sent: 6/20/2019 12:57:02 PM
To: * All Supervisors CFTC Wide [/O=CFTC/OU=Washington, DC/cn=Recipients/cn=*AllSupervisorsCFTCWide]
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections-- Updated Legal Requirements
Attachments: New & Updated Slides.pptx

Please see attached slide deck.

From: Giancarlo, Chris
Sent: Thursday, June 20, 2019 12:54 PM
To: * All Supervisors CFTC Wide
Subject: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections-- Updated Legal Requirements

Dear Colleagues,

The purpose of this email is to make you aware of two Acts passed in 2017 on issues surrounding prohibited personnel practices and their impact on you. Tony Thompson recently sent out a notice reminding employees of their right to be free from prohibited personnel practices (“PPPs”) and as such agency employees and contractors should understand prohibited personnel practices and whistleblower protections. As Chairman of the CFTC, I want you to know that I am personally committed to ensuring a workplace where everyone knows their rights as well as the safeguards that are in place to protect them. I take these protections very seriously and remain committed to ensuring that the CFTC is in compliance with the Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012, which provide the right for all covered federal employees to make whistleblower disclosures and to ensure that employees are protected from whistleblower retaliation. In addition, CFTC must now also comply with the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, and OSC’s Reauthorization Act of 2017, both of which together further enhance and reinforce rights and protections found in the Whistleblower Protection Acts.

Whistleblowing itself is defined as the disclosure of information that an employee reasonably believes evidences: a violation of any law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or analysis. Employees have many lawful options for disclosing wrongdoing, including to management officials, the Inspector General, and the U.S. Office of Special Counsel (OSC).

The 2017 Acts have added mandated training for all supervisors, added a fourteenth PPP, and changed requirements relating to how agencies handle issues surrounding PPPs. See Pub. L. No. 115-73 (10/26/2017) and Pub. L. No. 115-91 (12/12/2017) (Sec. 1097 Office of Special Counsel Reauthorization). The new fourteenth PPP prohibits an agency official from accessing the medical record of another employee or applicant in furtherance of any conduct proscribed by the 13 other PPPs. The other changes to the law include: (1) suspension of a supervisor if the supervisor commits a prohibited personnel action; (2) removing the supervisor if a second PPP is found to have taken place; and (3) incorporating a critical element in the Performance Plans of supervisors that includes protecting and constructively responding to whistleblowers. OSC has provided the attached slide presentation, “Responding to Employees Alleging Violations of Whistleblower Protections”, which provides information and serves as the mandated training on how to respond to complaints involving whistleblower protections. Beginning with the next Performance Cycle in July 2019, Element 7 will incorporate, among other criteria, your responsibility to respond constructively and proactively when employees make protected disclosures. Additionally, OSC has asked us to share the attached “New and Updated” slide presentation to supplement the PPP training provided to supervisors by OSC in the spring of 2017.

If you have any questions regarding this notice, please contact Karen Leydon, Chief Human Capital Officer at x 5007 or Lauren Colon, Chief of Workforce Relations at x5032.

Thank you,

JCG

J. Christopher Giancarlo
Chairman,
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Tel. (202) 418-5030

Prohibited Personnel Practices: Overview



14 Prohibited Personnel Practices-4 Categories

1. Discrimination

- * Based on race, color, sex, etc., but note, marital status and political affiliation 5 U.S.C. § 2302(b)(1)
- * Based on conduct that does not adversely affect performance 5 U.S.C. § 2302(b)(10)
- * Political Activity 5 U.S.C. § 2302(b)(3)

2. Hiring practices

- * Considering improper (political) job references 5 U.S.C. § 2302(b)(2)
- * Obstructing the right to compete 5 U.S.C. § 2302(b)(4)
- * Influencing withdrawal from competition 5 U.S.C. § 2302(b)(5)
- * Unauthorized preferences and advantages 5 U.S.C. § 2302(b)(6)
- * Nepotism 5 U.S.C. § 2302(b)(7)
- * Knowingly violating veterans' preference 5 U.S.C. § 2302(b)(11)

3. Retaliation

- * For Protected Disclosures 5 U.S.C. § 2302(b)(8)
- * For Protected Activity 5 U.S.C. § 2302(b)(9)

4. Catch-all and Non-Disclosure Agreements (NDA)

- * 5 U.S.C. § 2302 (b)(12)
- * 5 U.S.C. § 2302 (b)(13)
- * 5 U.S.C. § 2302 (b)(14)

**Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017
& Office of Special Counsel's Reauthorization Act of 2017
P.L. 115-73 (10/26/2017); P.L. 115-91 (12/12/2017)**



New statutory requirement highlights:

- PPP- 5 U.S.C. § 2302(b)(14) – improper access of medical records in furtherance of any PPP;
- Required disciplinary penalties for violations of 5 U.S.C. § 2302(b)(8), (b)(9), & (b)(14) – first violation results in proposed 3-day suspension;
- Education and training requirements – please email certification@osc.gov or call 202 804-7163 for more information;
- Inclusion of whistleblower criteria in supervisors' performance appraisals;
- OSC's access to agency records includes records protected by common law privileges.

Hiring Offenses



5 U.S.C. §§ 2302(b)(2), (4-7), and (11) prohibit:

- ✦ Considering improper (political) job references
- ✦ Obstructing the right to compete
- ✦ Influencing withdrawal from competition
- ✦ Nepotism
- ✦ Unauthorized preferences and advantages. To prove, there must be:
 - ✦ The granting of an advantage to improve or injure a candidate's employment prospects
 - ✦ An intentional and purposeful manipulation of the system
- ✦ Knowingly violating veterans' preference
 - Evidence of Intent?

New Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017



5 U.S.C. § 2302(b)(14) prohibits:

- **accessing the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in the other 13 prohibited personnel practices**

Proving Retaliation – Protected Activity

5 U.S.C. §§ 2302(b)(9), 1213-ELEMENT No. 1



Protected Activity

- ♦ **Exercise of appeal, complaint, or grievance rights**
- ♦ **Testimony or other assistance to person exercising such rights**
- ♦ **Cooperation with or disclosures to Special Counsel, Inspector General, or component responsible for internal investigation or review**
- ♦ **Refusal to obey an order that would require violation of law, rule, or regulation**

OSC phone / email contacts



Case Review Division:

(202) 804-7000
(800) 872-9855
info@osc.gov

Disclosure Unit:

(202) 804-7000
(800) 872-9855
info@osc.gov

Hatch Act Unit:

(202) 804-7002
(800) 85-hatch
hatchact@osc.gov

Website:

osc.gov [complaint
forms/e-file]

**Speaker Requests &
Certification Program:**

(202) 804-7163
certification@osc.gov

Medical Records: Question 1

Jimena is planning to apply for an open position and conveys her intent to the hiring official. The hiring official wants to hire another applicant and is concerned that Jimena's outstanding performance ratings may block the official's targeted applicant. The official uses his management position to access Jimena's medical records. Then, the official – using a medical condition found in the records – tells Jimena that the stress of the new position will exacerbate her "hypertension."

Which of the following is true?

- ☐ The hiring official may have violated section 2302(b)(5) by attempting to influence Jimena to withdraw from competition.
- ☐ The hiring official may have violated section 2302(b)(14) by accessing Jimena's medical records in search of information that could influence her to withdraw from competition.
- ☐ All of the above.

Answer

Correct answer: All of the above. The hiring official's attempt to influence the employee to withdraw from competition using knowledge gained from Jimena's medical records could be violations of sections 2302(b)(5) and (b)(14).

Message

From: Davis, Daniel J [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=77DFF82DCB344436BD3E30FC3D740DDE-DAVIS, DANIEL J]
Sent: 7/10/2019 1:19:57 PM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]; Jones, Shonneice [/O=CFTC/OU=Washington, DC/cn=Recipients/cn=sknight]; McDonough, Sue A. [/o=CFTC/ou=Washington, DC/cn=Recipients/cn=smcdonough]
Subject: GAO BSA Implementation Report: Chairman Letter for Signature
Attachments: Ltr from Chair re BSA Implementation Report 7 9 19.docx; [EXTERNAL] GAO Draft to Agency (102621 BSA Implementation)

Mr. Chairman,

(b)(5)

If you have any questions, please feel free to call me.

Thanks,

Dan

Daniel J. Davis
General Counsel
U.S. Commodity Futures Trading Commission (CFTC)
1155 21st Street, NW | Washington, DC 20581
☎: (202) 418-5649 | 📠: (202) 418-5521 | ✉: DDavis@CFTC.gov

Message

From: Kulkin, Matthew [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F973C0FE038742B4BB68C3EEAE3F8171-KULKIN, MATTHEW]
Sent: 6/18/2019 7:50:16 AM
To: Davis, Daniel J [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=77dff82dcb344436bd3e30fc3d740dde-Davis, Daniel J]; Zaidi, Amir [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=azaidi]; Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]; Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; MSklar@CFTC.gov ['MSklar@CFTC.gov']; Richardson, Erica Elliott [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=90deca0aceef45b393696dcc2f94f83a-Richardson, Erica]; Bussey, Brian [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a2d0b8b95a0b46029f13ebadb73f297-Bussey, Brian]; McDonald, James [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d89e804eca744bc82026c05480a124f-McDonald, James]
Subject: Facebook Blockchain Update Today

Matthew Kulkin

Director, Division of Swap Dealer & Intermediary Oversight
U.S. Commodity Futures Trading Commission
1155 21st Street, NW | Washington, DC 20581 | O: [202.418.5213](tel:202.418.5213)

Begin Forwarded Message:

From: "Lee Brenner" <leebrenner@fb.com>
Subject: [EXTERNAL] Blockchain Update today
Date: 18 June 2019 04:18
To: "Kulkin, Matthew" <MKulkin@CFTC.gov>
Cc: "Sandra Luff" <sandyluff@fb.com>

Hi Matt-

I know we are working on getting a call scheduled with the team, but I did want to make sure you heard directly from us about our announcement.

Today, we're announcing our participation in the newly formed Libra Association. Along with 27 other founding members, the Libra Association is publishing a white paper announcing plans to launch **Libra**, a global, reserve-backed digital currency on the **Libra network**, a new more inclusive financial infrastructure, powered by blockchain technology. The currency and network will go live in 2020. You can read more about Libra here: <https://libra.org/en-us/whitepaper>

Below is a description of the project, the role Facebook has played in its creation, and the way we will participate in the ecosystem once it officially launches. When we are able to chat, we look forward to hearing your feedback and answering any questions you may have. We know blockchain and digital currencies are new areas, and we are committed to having a regular dialogue, and to work, with policymakers and priority stakeholders on these and other issues.

As mentioned above, the Libra Blockchain and currency will be overseen by the **Libra Association**, an independent not-for-profit headquartered in Geneva. The Association will be responsible for **facilitating the operation of the Libra Network and managing the reserve** that backs the currency. Members of the Libra Association will consist of geographically distributed and diverse businesses, nonprofit and multilateral organizations, and academic institutions.

It's still early in the development, but as a first step, the Association is **releasing a testnet** (the early-stage code for the Libra Blockchain). This will help the association gather feedback from the community about the direction of the project and work toward ensuring a scalable, reliable, and secure launch. The code for the testnet will be open-sourced, and developers will be able to provide feedback, and take part in a bug bounty program.

We're also sharing plans for Calibra, a newly formed Facebook subsidiary, that will build financial services for Libra, and our first product will be a digital wallet. Using this wallet, people will be able to send, spend and save Libra. The wallet will be available in Messenger, WhatsApp and as a standalone app, and is expected to launch in 2020.

From the beginning, Calibra will let you send Libra to almost anyone with a smartphone, as easily and instantly as you might send a text message and at low to no cost. Calibra will have a dedicated team of experts in fraud and risk that is focused on building guardrails to prevent bad actors from engaging in illegal activities. In the event things don't go the way they should, we will offer fraud protection and refunds. Further, Calibra will implement a robust Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program on its platform wherever the product is available, irrespective of whether local regulations have applied AML laws to cryptocurrency wallets. For more information about Calibra and our customer commitments, please take a look here: [\[www.calibra.com\]](http://www.calibra.com)

We are committed to working with policymakers to make sure this new ecosystem is a value-add to economies and that citizens are protected. We are also committed to supporting the global dialogue on how blockchain and crypto assets should be regulated. We would love to get your feedback early in this process. Please don't hesitate to reach out with any questions you may have, and again, we look forward to speaking with you and the team soon.

Regards,
Lee

--

Lee Brenner
Public Policy, Blockchain
Facebook
(650) 387-9643

Message

From: Brad Carr [afreed@iif.com]
Sent: 6/12/2019 10:36:15 AM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Jones, Shonneice [/O=CFTC/OU=Washington, DC/cn=Recipients/cn=sknight]
Subject: [EXTERNAL] IIF FRT Podcast: Symposium speaker Bill Kahn on Machine Learning interpretability

Dear The Honorable Giancarlo :

Thank you once again for having joining us at our recent IIF Digital Finance Symposium in Washington on May 29, kindly sponsored by Deloitte. We hope you found the discussions stimulating and useful.

In addition to the discussion on [Episode 37](#) of our FRT podcast, where Symposium speakers Annelie Schnaar-Campbell (Standard Bank), Gene DiMira (ManuLife) and Michael Brett (QxBranch) shared their top takeaways from the day, we wanted to highlight another episode featuring another of our Symposium speakers. On Episode 38, Bill Kahn joins the IIF's Natalia Bailey to discuss interpretability of Machine Learning models.

[Listen now](#)

All previous FRT episodes can be found [here](#), including our recent discussions on Open Banking with former OSFI Deputy Superintendent Mark Zelmer, 3D Printing and international trade with Kati Suominen (Nextrade Group), and the IIF study on Machine Learning in Anti-Money Laundering with Sarah Runge (Credit Suisse). You can also now find FRT on [iTunes](#) or [Apple Podcast](#) and [SoundCloud](#).

Looking ahead, FRT Episode 39 features Doug Peterson (S&P Global CEO), recorded last Friday at the IIF G20 event in Tokyo, and this will be followed by discussions in Stockholm with Johan Torgeby (SEB CEO) and Stefan Ingves (Governor of Sweden's Riksbank).

Best regards,

Brad Carr.

Message

From: Daigler, Matthew [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8F0D8C0CCDA4C95879141C3867DB70E-DAIGLER, MATTHEW]
Sent: 5/20/2019 1:44:10 PM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]
Subject: Enforcement Action

Mr. Chairman

(b)(3); (b)(5)

Matt

Matthew Daigler
Senior Counsel
Office of the Chairman
Commodity Futures Trading Commission
202-418-6712
mdaigler@cftc.gov

Message

From: Wright, Ann [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WRIGHT, ANN830]
Sent: 5/7/2019 4:44:43 PM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]
CC: Thornton, Charlie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f7cd1b27f3e4fde80a5088eadd3b931-Thornton III, Norwo]; Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Rosenberg, Anna [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa32d3f7c5ca40b8a2d41a8dc9bffe34-Rosenberg, Anna]
Subject: May 8th hearing prep

Senator Van Hollen plans to attend tomorrow's hearing. He will, however, be juggling two hearings at the same time. He sits on the Banking Committee, along with Senators Kennedy and Moran.

He did not direct questions your way last year. I have provided last year's transcript below to give you a sense of his priorities. I jump right to the questions and share the full transcript. It was a fairly short hearing.

Ann Wright
Deputy Director, Office of Legislative and Intergovernmental Affairs
U.S. Commodity Futures Trading Commission
1155 21st Street, NW, Washington, DC 20581 Tel: 202.418.5594

TRANSCRIPT

June 05, 2018

COMMITTEE HEARING

SEN. JAMES LANKFORD

WASHINGTON, DC

SENATE APPROPRIATIONS COMMITTEE, FINANCIAL SERVICES AND GENERAL
GOVERNMENT SUBCOMMITTEE HEARING ON THE FY2019 FUNDING REQUESTS FOR THE
CFTC AND SEC

Bloomberg Government
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SENATE APPROPRIATIONS COMMITTEE, FINANCIAL SERVICES AND GENERAL
GOVERNMENT SUBCOMMITTEE HEARING ON THE FY2019 FUNDING REQUESTS FOR
THE CFTC AND SEC

JUNE 5, 2018

SPEAKERS:

SEN. JAMES LANKFORD, R-OKLA., CHAIRMAN

SEN. JOHN BOOZMAN, R-ARK.

SEN. JERRY MORAN, R-KAN.

SEN. STEVE DAINES, R-MONT.

SEN. JOHN KENNEDY, R-LA.

SEN. RICHARD C. SHELBY, R-ALA., EX OFFICIO

SEN. CHRIS COONS, D-DEL., RANKING MEMBER

SEN. RICHARD J. DURBIN, D-ILL.

SEN. JOE MANCHIN III, D-W.VA.

SEN. CHRIS VAN HOLLEN, D-MD.

SEN. PATRICK J. LEAHY, D-VT., EX OFFICIO

WITNESSES:

CFTC CHAIRMAN J. CHRISTOPHER GIANCARLO

AND SEC CHAIRMAN JAY CLAYTON TESTIFY

LANKFORD: Thank you both very much on this, I'm going to defer my questions to the end to give time for other members to be able to step in earlier on this. So Senator Van Hollen?

VAN HOLLEN: Thank you, Mr. Chairman, again, welcome to both of you. Commissioner Clayton I've got a -- Chairman Clayton, I got a question related to conduct and appropriate conduct by members of the SEC, because there were some recent alarming reports with respect to an exchange between one of the commissioners, Commissioner Pivovar and Citibank and my first question to you is would you agree that it would be inappropriate for a member of the SEC to suggest that the way a regulated entity was treated depended on the position that

entity took on a business decision outside the purview of the SEC?

CLAYTON: I think we -- senator, we interact with a number of market participants, what I can tell you is how I approach those interactions and that is in a very open, fair, and transparent way...

VAN HOLLEN: And I'm not suggesting otherwise, Mr. Chairman, with respect to any conduct. I will cut right to the chase, there were reports and you know, Senator Kennedy and I are both in the banking committee as you know, Citigroup as a matter of policy said to its retailers that they shouldn't be using Citigroup services to sell weapons that had not gone through a criminal background check where the buyer was under 21 and it's been reported, I assume you read the reports that one of the commissioners, Commissioner Pivovar met with Citigroup at their request on a derivatives regulation issue and in the course of that conversation, Commissioner Pivovar chewed them out for the position Citigroup had taken on this issue outside the purview of the SEC.

And so my question to you is are you aware of those reports, did they concern you, and have you asked the Inspector General to determine whether or not that was a violation of SEC conduct and rules?

CLAYTON: I am aware of those reports, I have not asked the Inspector General to investigate those reports and I don't think that this would be the appropriate forum to get into that but I understand your comments and your concerns.

VAN HOLLEN: I appreciate that and my concerns are shared by number of our colleagues and I think you'll be receiving a letter in your capacity as Chairman, but we're also going to be asking the IG to take a look at this because regulatory bodies should not be using their authority to try to assert the personal opinions of the members and I think we share that view.

Anyway, I just want to give you heads up on that issue, this has nothing to do with anything you did or said in your personal capacity but I just want to raise it with you because the integrity of the process whether it is CFTC, SEC, any regulatory commission is that they shouldn't be using the power they have over regulated entities on issues outside their jurisdiction. We may all disagree with the policy position Citigroup took, but I don't think we should disagree on using that leverage.

Let me ask you question on cybersecurity and we've had

this exchange in the banking committee. And I know you're concerned about the issue of the timely disclosure by entities under the jurisdiction of the SEC that had been hacked, we talked about Equifax in the banking committee as I'm sure you're aware, a report from the White House Council of Economic Advisers back in February actually identified concerns at the SEC specifically, I just want to read from the report "The effectiveness of the SEC's 2011 guidance is frequently questioned, there are concerns that companies underreport events due to alternative interpretations of the definition of materiality."

It is a concern I share, I was somewhat disappointed to see the regulations coming out from the SEC, I think in April, after this February report, that simply sort of adopted the 2011 recommendations that were criticized in the SEC report and I wonder if you'd be willing to take another look at this with us because the Equifax example is one that I think, shows that there's this -- there is a problem when materiality can be so loosely defined that different folks under your regulatory purview have vastly different interpretations.

CLAYTON: I understand everything you said, it is a complex issue. Let me try and address a few things. First, you'll note that we brought a very significant enforcement action in this regard against the company formerly known as Yahoo for their failure to disclose in this area, it was clear that the information that they had was material and should have been disclosed. Second, I think an issue that we've talked about in the past is trading during the period of time that a company identifies an issue, it's clearly important, let's use the word material for sake of argument, and then it's disclosed.

I'm very willing to work with you on that issue because as I've testified in the past, I think it's good corporate hygiene that in that period, senior officers should not be trading in securities whether they themselves know or don't know of this event. In that area, I'm willing to...

VAN HOLLEN: I appreciate that, as you know and forgive me, Mr. Chairman, but that's after the company itself is already determined materiality between that time and disclosure but there's still this gray, a lot of ambiguity over what constitutes materiality. I would only point out that with respect to OMB of federal agency, there are clear guidelines for their timeline for reporting hacks, for example into the office of personnel management system that we saw a few years ago.

So I just -- I think we should have a little clear

definition of what constitutes materiality in the context of these cyber breaches.

Thank you.

LANKFORD: Great. Senator Kennedy.

KENNEDY: Mr. Chairman, welcome, Chairman Clayton, when an American corporation including but not limited to a broker-dealer violates the securities laws of another country, are we made aware of that, do they have to report their violation to you?

CLAYTON: Have to, generally those other countries do not have statutes that would require their enforcement authorities to notify them...

KENNEDY: What about the American corporation that violated the foreign law, do they have to tell you?

CLAYTON: Is there an absolute obligation to tell us? I do not believe so. Are there other disclosure obligations that they have that would trigger a requirement to make disclosure, yes, and as a matter of policy to American public companies that have a foreign enforcement problem, contact us to let us know, they generally do and they should.

KENNEDY: Have you heard of a company called Real Gold Mining Limited that was suspended from trading on the Hong Kong Stock Exchange? Does that ring a bell?

CLAYTON: Senator, that company does not ring a bell, and I want to be careful not to talk about any pending enforcement actions.

KENNEDY: Well Hong Kong fined American Corporation Citigroup \$7.26 million for misleading statements during the IPO of Real Gold Mining Limited and Real Gold Mining Limited ended up being suspended from trading on the Hong Kong Stock Exchange, do we know if any American investors were hurt?

CLAYTON: Senator Kennedy, I do not know about that specific situation but I can tell you that if there was fraud on a large foreign stock exchange, it is likely that directly or indirectly an American investor has been hurt.

KENNEDY: Okay, well, would you look into this? I mean \$7.26 million is quite a fine and I don't know the facts of the case but I read about it in the Wall Street Journal. But I'd be interested to know that if Citigroup or other corporations violate securities laws of another country how we go about determining in a global economy whether American

investors were injured as well.

CLAYTON: Your question and including as a policy matter is a very good one, American investors estimates vary but it's the least \$9 trillion invested outside the United States and one of the things that is important to me is what are we doing it the SEC to ensure that when money goes outside the United States, they're getting protections that are similar to what they expect at home and I can tell you that the two of us work closely together through IOSCO and the -- mostly through IOSCO but also through the FSB with that in mind because we send a lot of money outside the United States.

KENNEDY: Well, if your Inspector General goes to work on the issues that the distinguished senator talked about, I also like to look into why because of the greed of a handful of companies in 2008, it caused the entire banking system and all almost the world economy to crash, not a single solitary member of senior management went to jail, you might ask to take a look at that too. I like the thoughts of both of you about the Volcker rule. I will hush, we got 34 seconds if you could just tell me, I know there are changes being made we haven't had a recession since '08, are we making changes too quickly? I'm not saying we are, I'm just asking your opinion, Mr. Chairman?

GIANCARLO: Thank you for the question. We monitor markets very, very carefully, just last week, when the Italian bonds went into a mini crisis, we saw a real strain in those markets, in February when the VIX volatility index when interest rates had the prospect of rising in that index, we saw a strain in the markets and what we observed is not an abundance of high-level market-making, banks have moved out of the market and one of the reasons is the Volcker rule, and one of the reasons is a presumption that's not the way it is written in the law but the way it's been adopted by the agencies, a presumption that activity is proprietary trading unless proven to be market-making.

And that that's an odd presumption and what the changes that our agency proposed yesterday is to remove some of the bias against market-making and I think that's healthy for markets, the core principle however remains because...

(CROSSTALK)

KENNEDY: ... hard (ph) line between proprietary trading and market making.

GIANCARLO: Right, you know, I spoke to Paul Volker about this a year and a half ago and he admitted he said look the Volcker rule is an easy concept but is hard to do in

practice. In other words, let's separate proprietary trading which banks shouldn't do with depositors money which market-making which is a legitimate function but he admitted that getting the separation right is a challenge, what was done in the first crack here was to put in a presumption that things are impermissible proprietary trading, by removing the presumption, we're still keeping the prohibition on impermissible proprietary trading using depositors fund (ph) and I think that's the right thing.

So you know it will be said that what has been proposed is you know, a roll back and going back to the crisis but it's really not it, it's really a very measured moderate response and I take it as a good sign that Marty Gruenberg from the FDIC supports the proposal that was put forward by at least our agency yesterday.

KENNEDY: Thank you, Mr. Chairman.

LANKFORD: Before I move to Senator Boozman, Chairman Clayton, would you respond on the Volcker rule as well, both of you have been asked about it, I know that will be a question then we'll come straight to Senator Boozman.

CLAYTON: Sure, let me just supplement what Chairman Giancarlo said which is this is a very complex area, important area, but an area with a great diversity of firms involved.

And I think that what I'm very happy with is that we're taking a small and medium-sized financial institutions which are tell me if I have this right, less than 5 percent of trading activity, in fact, we are taking a tiered approach instead of a one-size-fits-all approach and I think that's wholly appropriate in this area. I think that the compliance burden that fell on those institutions that are the small and midsize banks was greatly out of proportion with their trading activity. And other than that, I'm fine with everything Chairman Giancarlo said.

LANKFORD: Thank you, Senator Boozman.

BOOZMAN: Thank you, Mr. Chairman and thank both of you all for being here and we really do appreciate your hard work and your guidance in these areas. Before I get in to my questions, Chairman Clayton, I understand the SEC adopted the rule of 30 E3 earlier this morning, I appreciate the commission taking into account real concerns of my constituents and stakeholders not only in Arkansas but across the country had with the rule in your efforts to address some of the issues.

However, I still have concerns that the 30 E3 rule that was approved today, an opt in rather than an opt out for paper reports will have far-reaching consequences for many of my constituents that are elderly, many that do not have reliable access to broadband Internet or simply want hassle free paper reports.

So I think that the technology is getting there but as you travel through Rural America, it is still a huge problem for some.

CLAYTON: I recognize those concerns, our staff recognize those concerns and the rule that was approved is I would say, a substantial departure from what had originally been proposed. We have a two-year phase-in period. The earliest that a fund, complex or company could switch to opt into paper is 2021 and that's only after they've provided extensive notice and opportunity for their investors to choose.

This is also part of an overall assessment of investor experience that we're going through. So we think that this is the right move but we don't think it's one that should be done hastily and we think that we should be providing the very constituents that you mentioned every opportunity to continue to receive reports as they receive them today in paper.

BOOZMAN: Thank you very much, Mr. Giancarlo, in your testimony you mentioned the Shanghai International Energy Exchange launched a Yuan dominated crude oil and iron ore contracts allowing non-Chinese market participants to trade in Chinese commodity markets for the first time. Can you talk to us a little more about the importance for farmers and end-users of the commodities that they trade to be priced in U.S. dollars and not other currencies.

GIANCARLO: Indeed, you know I've spent a lot of my past four years on the commission meeting with the farmers that use our products and I will often point out to them I said, do you understand the compared to farmers all over the world you have one advantage that you probably don't think about but it's an enormous advantage and that is most of your production is priced in U.S. dollars, when you compete against an Argentinean wheat grower or Australian wheat grower, their production is priced in dollars not in their native currency that's a tremendous advantage. We are the world's largest food producer, we are becoming the world's largest energy producer.

The largest consumer however is China, the largest consumer of energy products largest consumer of iron ore for

purposes of their world leading steel production, largest consumer of soybeans I understand China consume 60 percent of the world soybeans, so they're sitting there saying we are the largest consumer, why are we paying dollars for these core commodities and so it is part of their brand strategy to become the world's leading economic power to see the transfer of the pricing mechanism of these core materials, these core commodities that they consume from dollars into their currency.

Now that may be decades away but the steps that they're taking in the last few weeks are very much part of that strategy. We should no longer take for granted that for now and for all time, these commodities that we produce and lead the world in production will remain priced in dollars for all eternity, that's there's nothing in that, and the one advantage we have I believe is not only being large producer, we are the best regulated market for these, the price mechanism that is set in Chicago and New York for these commodities is overseen by our agency, and I believe, truly believe we are the world's best regulator at this, there are real deficiencies in the way other regimes go about regulation including in China, and we saw when there were problems in their market a year or so ago and they're very heavy-handed approach to addressing those problems was not the approach we take.

We take a much more well-informed and appropriate principle-based approach and I think that's one of the reasons why the pricing mechanism is here, one of the reason why the world looks to U.S. markets to price these core commodities.

BOOZMAN: So and not taking this for granted, you mentioned the ability that we have to run a very orderly system, are there other things that we need to be doing along that line.

GIANCARLO: Well, will look we could stop China from offering these products around the world I don't think we can stop the amazing growth of their economy, it's their right to do that in their they're doing some brilliant things. What we can do is just do what we do but even better and I think one of those advantages and I said in my opening testimony good regulation is a national competitive advantage, and I think that's why I humbly ask that our budget request be fulfilled so that we can continue to do what we do but do it even better.

BOOZMAN: Very good, you make a good point. Thank you, sir.

LANKFORD: Thank you. Let me keep going on the theme of your budget request. \$32.5 million increase, do you consider this bringing up to the level that you think it should be and is it sustainable, is this a one year bump, is this bringing up to new level, how do you -- what are what are your expectations for the next several years on budgeting?

GIANCARLO: Thank you for that. As you know, Chairman, we have been flat funded several years for several years and in fact decreased last year. This increase of roughly 13 percent to 14 percent will bring us to a level that had we seen incremental increases during that time we would be there. Should you see fit to fund our full request I don't see similar request of that magnitude going forward I see that incremental increases going for. So it's really to bring us to worry and address some of the challenges we've had over the last few years and some of the cuts we had to make in technology, in supervisors, you know, we have some real quite mission-critical shortfalls in cyber examiners and technologists, things that we really should not be falling behind in that we have been.

We are we effectively in a hiring freeze and had been for several years and as attrition works its way you know it's very uneven, when some critical areas we have not been able to backfill and we need to do that. So this funding will get -- bump us up to where we need to be and then I see incremental increases thereafter.

LANKFORD: Do you see the increased funding to say the technology side of it on equipment and technology or on personal and technology.

GIANCARLO: Both so technological skills are in short supply and the people you need for cyber I mean, the going away bid for their services is enormous so to fill those are critically important, it's a combination of skilled people and skilled tech -- and competent technology. Again, once we catch up, then our needs going forward should be incremental.

LANKFORD: Okay, the SEC, same issue on technology, what do you expect as far as modernization efforts?

CLAYTON: Well, as I mentioned, I thank you for the additional funding that we did do we did need to lift not only our cybersecurity game but effectively our advancement, or if you want to say it in a negative way, our retirement of legacy systems, part of cybersecurity and good cyber hygiene isn't only what's my cybersecurity protection, but it's rolling off your legacy systems that were built with less protection and replacing them and we're able to do that, I think we're in a good place but I want to be clear, I think

when I say we're in a good place, we're in a good place from funding because I know where to put the dollars.

We're improving in our cybersecurity risk profile but we have work to continue to do and I expect it to be a continuing journey.

LANKFORD: So one of the things that you and I talked about is not just cybersecurity and right software, right hardware, right personnel and process but also how much information do you really need to be able to hold that becomes a threat on it. Obviously with the breach the Edgar system before, it raises new questions show where you as far as what information you really need to have accessible at that point?

CLAYTON: Let me put that into two categories.

LANKFORD: Sure.

CLAYTON: Personal identifiable information, PII, following the breach, we did a review of the PII that we take in and we have eliminated taking it in areas where we don't need it, and we continue to approach that issued and I expect to continue to approach that issue in the same way.

We are not going to take that kind of retail investor information in unless we needed to fulfill our mission of more general market information the same approach like we discussed why would we create a risk unless we need it to fill our mission. A more general market information, the same approach, right? We discuss.

Why would we create a risk unless we need it to fulfill our mission. So we are looking at the market information, the company information that we take in, it's non-public, do we need it? Do we need it at the time we are taking it because overtime, the value of that information to for lack of a better term, bad guys, diminishes.

So we are looking at those issues as well.

LANKFORD: Let's talk a little bit about staffing changes, you mentioned this article about staffing changes you mentioned quite a bit of our staffing changes in different key areas, which area or office as you look at the priorities of adding 100 different position basically, if I can, becomes the top priority for you.

So when you're talking about we've got a lot of priorities, this one goes first, what is that laying for you?

CLAYTON: Let me give you the floor if you don't mind, (inaudible) first we talked about IT, there are a few positions there that we want to fill, then we go to the programmatic ones, enforcement and inspections, in enforcement we've probably had the most significant attrition I know that we can add value there, inspections the number of investment advisers that are operating has increased, therefore our obligation to continue to inspect them has increased. We are doing a lot with risk-based inspections but we also need smart, competent people to do it.

Lastly is in trading markets as I've talked our markets have evolved a great deal, I want to make sure that we have the people in place, I will give you an example, fixed income is moving from what I will call human oral trading to a great deal more of electronic trading. I want to make sure that we have the people who can cover that transition, it's a transition that is akin to what's happened in the equity markets but it's not going to be the same, and we need some expertise in that area as well.

LANKFORD: So that the challenges you have is the IG went back and evaluated very not fun a valuation on human capital management and pressed on SEC, this was the quote SEC lacks assurance that its hiring specialist have the necessary skills to hire and promote the most qualified applicants in accordance with key principles of an effective control system. I know you have seen that and this has already been a work in process, but we are adding on additional 100 people especially in high end areas like that, how do you feel at this point about hiring a specialist and those individuals are happening -- managing human capital.

CLAYTON: I'm going to give you what may sound like a simplistic answer for this one I really believe in good people hire good people.

LANKFORD: I would agree, that is not overly simplistic, that is good common sense.

CLAYTON: Okay, well I think we have good people in place in those programmatic divisions that I mentioned.

LANKFORD: Is that a transition from what the IG was concerned about before?

CLAYTON: Senator, chairman, I don't know if that is the transition but I have a great deal of confidence that the people who are now heading those divisions know how to identify talent and I'm going to leave them to do it.

LANKFORD: Okay, fair enough. Let me ask if there are

other senators asking a round of questions.

Senator Kennedy?

All right, let me -- I'm going to -- I've got a stack of second round here that I want to go and jump into.

GIANCARLO: Senator Lankford, may I just actually answer the question you asked my colleague Jay Clayton about personnel where we're looking for, in our request, we request 46 FTEs and I just like to break those down for you to understand how we think about staffing. So I put them into three box buckets, a third, a third, a third.

The first third of our personnel for what I call prevention, we you know, Senator Kennedy talked about the last crisis, we think about what the future crisis might look like and think about maybe we can do something about prevention so it doesn't happen, not that we have a crystal ball but when we think about prevention, we think about two areas, one is cyber and one is in our Clearinghouses, you know, one of the effects of Dodd Frank was to supersize our clearinghouses with swaps clearing.

How do we get ahead and it's vitally important we have the examiners to do the exams and to go into the detail so maybe we find a problem before it becomes a crisis. In the areas of cyber, we desperately need to fill in additional personnel to do quality cyber exams of their cyber defenses in our global clearinghouses in our futures exchanges, and what are their other defenses as well.

And then the second bucket is how we be more forward-looking and that's where we really need more technologists to understand the way our markets are going digital you know by the minute, an economist understand the dynamics of algo trading and other impacts on the marketplace. And then the last third is to just fill in gaps that have emerged over the last four years of flat funding and a hiring freeze just to give you an example, we haven't had a full commission for four years now, but we face the prospect very soon of having a full commission, two new commissioners arrived.

Those commissioners will need to be staffed, those staffs will come out of our budget just as our budget has gone down for fiscal year 18, we may have two new commissioners arrive that will need to staff up, so just filling in the gaps there and in other areas as well so that's our 46 FTE (ph) budget proposal.

Thank you for giving me the opportunity.

LANKFORD: No, glad to, thanks for the insight on that. Help me understand a little bit, you put out a paper white paper on swaps regulations, swaps reforms that's pretty sweeping to be able to take a look at and say where could we go and what does this really mean in implementing issues and margins and all kinds of things. Walk us through that will be the financial needs as far as staffing around that as well?

GIANCARLO: Thank you for that.

You know I'm a maybe a bit of a rare breed when Dodd Frank was passed, I actually publicly stated I thought title VII worked, I said Congress got that part right swaps reforms, and I said that after 14 years in the swaps industry, I knew firsthand the shortcomings in the market structure. I also knew how the market worked and I knew what worked well and so I was a keen observer of how the CFTC and other federal agencies implemented title VII.

And at the time, I wrote a white paper in 2015 laying out areas where I thought the agency got it right and areas where -- and I thought now coming in as chairman, it was time to update that and reflect on what I've now seen we got four years of experience with our swaps reforms at the CFTC.

Again, I still believe Congress got it right and I think in some cases, the agency has been extraordinary successful in its work, so the clearing mandate lamented by my predecessor chairman by two, Gary Gensler, has worked extraordinary well, but that has led to second-order impacts we've supersized some more of the world clearinghouses, what are the impacts of those super sizing of those clearinghouses? How do we oversee them?

How, in the event of a crisis, do we make sure they were able to recover or if they're unable to recover, how are they then resolved and how are all their accounts put back into good order? So we address that in this white paper.

The swaps reporting mandate which I think is actually probably the most important mandate to come out of Dodd Frank and yet 10 years after the crisis, eight years after Dodd Frank was passed, we still don't have a clearing composite picture of the counterparty credit risk of one financial institution to another because of it swaps book.

How can we make that swaps reporting a reality so we can actually use it to signal where the risk is building up in the system and I lay out ideas for that as well. In the area of swap dealer capital, one of the big problems I believe in the swaps reforms, they are actually biased against swaps and

part of the problem there is we continue to rely on the notional amount of swaps which is why when people talk about the swaps market they talk about it hundreds of trillions.

LANKFORD: Right.

GIANCARLO: Well, we recently introduced some research through our office of chief economist that says when you actually net that down, the swaps world looks a lot like other large markets like the U.S. treasury market and not like some gargantuan marketplace, it actually falls into a logical proportion to other key global markets. And once it is put into proportion, maybe then we can have regulations that reflect its actual size and not fears about it overwhelming the global economy.

So that us what we try to do in this. It's very much a forward-looking work, it doesn't lay out things that to be implemented next month or next week but it lays a forward path to what I think is a balanced and healthy approach to swaps regulation, one that is not biased against derivatives which as I explained in my opening remarks, are very important to the U.S. economy, I think our leadership in the global swaps market underpins the U.S. dollar as the world's reserve currency and I think we need to maintain that edge, but we need to do it in a balanced, thoughtful, intelligent, and well-regulated fashion.

LANKFORD: So you've also put our recent conversation on registration as a swaps dealer, so an \$8 billion dollar notional value rather than \$3 billion, walk us through the why and the what and what do you think is the effect of that.

GIANCARLO: So we really -- when this original rubric was set in place, the \$8 billion then falling to \$3 billion, there was actually very little data, it was it a -- I would say it's an educated guess by the agency. Now we've got years of data and we did a very, very thorough analysis and what we found is if the \$8 billion were to fall to three, we would only gather in less than 1 percent more swap dealing activity.

Fact the matters we probably wouldn't gather it in because that dealing activity is done by small local power utilities, agricultural co-ops, small regional banks, and in the last four years I've met with many of them and they all tell me if that level drops down to three, they will drop their dealing activity from 7.9 to 2.9 because they can't bear the cost of becoming a swap dealer.

It was estimated recently that the cost of being a swap dealer is over \$300 million per entity, and these small power

utilities cannot do that and so the cost-benefit analysis of capturing potentially another less than 1 percent in imposing those costs just didn't make sense. All we would be doing is rewarding the large Wall Street banks that can afford that \$300 million to be a swap dealer, we would we would be hurting the small local liquidity providers and helping the large banks.

LANKFORD: So how does that \$8 billion amount need to be revisited?

GIANCARLO: So what would what we adopted yesterday on a two to one vote of the commission is to keep the level at the \$8 billion and not drop it down to \$3 billion as I said yesterday, I believe that is right, I think it's right for the U.S. economy, I think it's the right level we will still be registering the Wall Street banks and at the end of the day, it was the Wall Street Reform Act, it wasn't the Small Business Reform Act.

LANKFORD: (Inaudible) my question is if we don't revisit that in a regular cycle and then as time goes on, you're capturing more and more small businesses that don't need to be engaged in it.

GIANCARLO: And we should indeed revisit that on a regular cycle using up-to-date data.

LANKFORD: Do you have a plan on how often that that should be or a recommendation how often that should be revisited?

GIANCARLO: Well, we did after four years, I think that gave us a good outcome, we haven't set that as a regulatory objective but I think something like that maybe every five years might be the right time period.

LANKFORD: Okay, thank you. All right, let me ask you something simple for both of you. What are we going to do on crypto currencies? This is not complicated at all, what was the plan was, what's the direction, what's the staffing need that you have that the regulatory authorities needed.

CLAYTON: Okay, let me divide it into buckets, crypto currency as crypto asset, we will call it currency as a replacement or substitute for the dollar again, and then what we call ICO's, initial coin offerings, a crypto asset, it is a security, the ones that are -- the substitutes, the SEC does not regulate that, we regulate securities transactions and persons who issue in trade and securities.

Both of us have mentioned that that space is a space

where there is no direct regulation of those crypto currencies and it makes sense that there's not because these were all sovereign backed, now we have a purported substitute for the sovereign backed currencies, there's not a specific regulatory framework in place, there's anti-money laundering, there is a number of other statutes that we touch on this but no comprehensive body of regulation we need to watch this space for that and many other reasons.

GIANCARLO: I would tell you say the last 18 months for Chairman Clayton and I in the area crypto currencies has been what the Grateful Dead call a long strange trip, we had to come up to speed awfully quick in this area that was developing very fast, in Chairman Clayton's case, the SEC's case, to make it -- to make the world understand that unregistered ICO's would not be tolerated and I think that message has been delivered loud and clear.

In our case, to work within our unique statute of self certification by our self-regulatory organizations for crypto derivatives, crypto currency derivatives which had been launched and we have now put out recently, guidance on the standards that we will look at when we review those self certification. We had to get up to speed very quickly but I do think as we sit here today within the SEC's area and its jurisdiction, within our jurisdiction, we now have our principles expressed and understood but there is that area that Chairman Clayton mentions that I think is the area that is the cash exchanges, the cash exchanges for this crypto currencies is an area where we don't have direct regulatory oversight. And that's an area where there's a lot of talk right now as to what is the right way forward.

There is potentially a federal role, the states are exploring what their role is, certainly some states like New York have developed a crypto license, a crypto currency license, others are looking at this and I think a general conversation, it's time to be had as to whether a 50 state approach or federal regulation approach is the right area but I think that we do need to -- I think bring our best minds around the issue is where do we go forward as these products become more of them and what they look like but what is the right role for regulation and at what level of federal and state regulatory...

LANKFORD: So what you need from us because you still have a connection on whether it's initial coin offerings or whether it's fraud or whether it's money laundering or any number of things that are in that space, what was it that you need at this point as far as legislatively?

GIANCARLO: We need our budgets fulfilled.

LANKFORD: That would be helpful.

GIANCARLO: You know, part of our budget is for technologists and one of the areas, when we're approached by the self certification, the amount of resource we devote to make sure we are ready when they're ready to launch is a real strain on our resources and we don't have a choice, we cannot say to a self certification this meets our requirements but we don't have the budget it can't go forward, that's not a basis in which we can -- we have to do what we have to do.

So the budget allocation is critically important for the CFTC.

LANKFORD: Okay, Chairman Clayton, anything you want to add.

CLAYTON: I will just say and thank you, Chairman Giancarlo, that in this security space, when we're talking about crypto assets that are securities ICOs, our laws are clear, either conduct a good private placement following the private placement rules that are well-established or you register with the SEC and conduct a public offering including with financial statements and all the requirements of the public offering.

And we have allocated resources to ensuring that people do that and we will enforce those laws. It is an area that I watch in terms of assets that we need, I think we're good for now, but I'm watching that space.

LANKFORD: Fair enough. Let me flip topics on here real quick as well, Chairman Clayton and that is dealing with IPOs and trying to encourage more opportunities for more people to be able really get out to the market. My concern is that I watch -- is the smaller number of IPOs and say the last 10 years the growth of the activist investor and is that encouraging or discouraging public opportunities to be able gain -- to be able to enter into the market or does it continue to limit dollars in smaller and smaller hands because if you have activist investors and other complexity in the market than it is easier to go get private capital that is to go on the public which again centralizes wealth again.

So the question really is for you is where are we on some of the rules on dealing with activist investors, what power that they have, the percentages in the rules, is there anything, just trying to be able to examine to say is this the right model, the right look to be able to consider?

CLAYTON: Chairman I share your concern about the relative size of our public equity markets and therefore the relative size that our retail investors have to participate in. Are we reducing the opportunities for retail investment and as you said if it all of the good investment opportunities, that is an exaggeration, if many of the good investment opportunities are in the private space, the people who have access to the private space are generally our most wealthy, not the middle class.

That troubles me, I want to encourage the growth of our public markets, your specific question around activists and governance, in the last decade, the governance dynamic of our public companies has changed significantly as a result of a number of factors, the result is -- not saying it's a good thing or a bad thing, shareholders have more direct access and more immediate effect on the governance of public companies, items that were reserved for the board of directors are now more greatly influenced by shareholders, that has effects.

LANKFORD: Is that based on just a new the functioning of an older rule or new rule?

CLAYTON: New rules, new dynamics concentrations of holdings as well as direct access to governance by shareholders which has increased the ability of shareholders to affect decision-making. My view is we should recognize that, take a pause and ask ourselves things have changed, have they changed for the better, there are arguments on both sides but we should recognize that things have changed.

LANKFORD: Right, and that is something that you are currently evaluating to be able to gather data that will help make a decision on a proposed rule.

CLAYTON: That is our job.

LANKFORD: Let me ask about another rule that is sitting out there the standards of conduct for investment professionals, and I saw a thousand pages by that's out there shorter than your written testimony by the way of -- that is a big piece though.

CLAYTON: And to think my mother couldn't get me to write a paper.

LANKFORD: Listen, all of your folks have been -- well, because it was extremely not only well written, but a lot of great information there. So this whole issue about trying to protect small savers and families who are trying to get started, this is a big issue because it only goes back to the

middle class and people are just starting out and try to invest, this is no simple rule because this affects how people will be able to save for their own retirement and try to invest when they're just getting started out when they're setting aside \$10 a month rather than people are setting aside 10,000 a month on the other end of the spectrum.

Give us a feel of where this goes right now from this proposed rule.

CLAYTON: Okay, it is no simple rule, but what we're trying to do is for the type of person you talked about, make it simpler.

There are two types of relationships with investment professionals we have in this country, there's an investment advisor type relationship which is a portfolio based on what I would say same longer-term more general relationship than there is a broker-dealer relationship which is a transaction based, more episodic in the moment relationship. We believe that in both cases, the investment professional can put their interests ahead of the client but that means different things in those context because we should recognize that and one, you're having a longer term relationship over a greater aspect of someone's investment, the other is shorter term, both of these models have served us well, they can be improved and they can be clarified, so we want to keep them, improve them, and clarify them, and that is what we're trying to do.

And specifically, we want our retail investors to be able to have a candid conversation with their broker-dealer or their investment advisor about how they're getting paid, what their incentives are and what that encourages them to do so that they can make more informed choices and they can be better protected, that's what we're trying to do.

LANKFORD: Okay, give us a guess on the timing.

CLAYTON: So we have allowed for a 90-day comment period, I'm sure we will take that full comment period, we are doing investor testing, we are doing investor townhalls, let me just take this opportunity say we want to hear from investors as to what they want because my objective is to align the law and the practice with investor expectations, what does a reasonable investor expect and let's see if we can align a law and practice with that so we are going to take at least the 90 days, but you know what? I'm not going to take forever because this issue has been out there a long time and I think it's time to bring a focal point for the many regulators in this space.

LANKFORD: Okay, thank you.

Chairman Giancarlo, any final comments? Anything you want to add?

GIANCARLO: Well, we have a different area but what I hear from Chairman Clayton is this focus on where the rubber meets the road of people's retirements and how they allocate money, how they speak to their professionals, what they expect in return in terms of their needs being put first. And in very many ways our approach to markets although again we do have different approaches historically in our approach of our agencies, are our approach that we are still the same thing is what is the experience of America's producers when they are going to find price discovery to find out what their crop, what they should be getting for at the elevator, do they trust the price coming out of the Chicago Merc or NYNEX others, do they know that that price is going to be a fair price when it's reasonably settled.

The reason why the world relies on prices coming out of our markets is because they believe they are deep, they are liquid, they are efficient, we must never take that for granted and final thought is that I hear Chairman Clayton talk about that marketplace that we took for granted for years of how enterprises were financed first to private equity and eventually to the public markets, it worked so well if it was the envy of the world and in it and it built the great companies of like Apple and Cisco and others, all these great firms that dot the landscape that we rely on.

They all came to fruition through that process. Did we take it for granted have we allowed it to be gummed up, then we need to fix something and I worry about taking for granted our own price discovery markets that set the world price for commodities we mustn't take those for granted as well because other countries see them and they want them for themselves, we mustn't take them for granted, we must do every possible all the time to keep refreshing, what are we good at, how do we keep being good at that, those are our vital national interest we need to retain them.

LANKFORD: I would agree, by the way, I did jokingly talk about your opening statement earlier, it is an inspiring piece of literature, you start out with a great American story and telling the story of it and ended with Dunkirk if I recall correctly and so it's -- the information that you provided and the inspiration was helpful.

GIANCARLO: As we celebrate the anniversary of World War 2, a great uncle of mine, my mother's cousin died at the Battle of Bastogne and I think about that all the time when

people give their service to the country, they give the ultimate service, we in public service we don't face that type of peril but it's vitally important that we take it as seriously as they did and deliver for our fellow citizens as they did as well.

LANKFORD: I would concur. Chairman Clayton, any final statements?

CLAYTON: I want to thank Chairman Giancarlo and my other fellow federal regulators not just our coordination around the Volcker rule but the coordination over the past year in trying to assess where markets are going, where the vulnerabilities are and just make us better, I think I really appreciate the cooperation we have and I appreciate the cooperation we have with the fed, the FDIC the OCC, so thank you.

LANKFORD: Well, I would tell you the American economy is benefiting from good leadership at this point as well, we have one of the lowest employment rates that we've had in decades and now -- so the job market is accelerating, the stories that we are frequently right now from my home are trying to look for employees rather than employees looking for work, it's a very different story than where we were 10 years ago and both of you have a tremendous responsibility within our economy to be able to keep a good, balanced, stable economy that continues to be able to provide jobs to people in the days ahead.

So thank you for the continued work, there is much still be done in this process to make sure we have some regulatory certainly that maintains a growing vibrant economy.

If there are no further questions and comments from either you gentlemen, the hearing record will remain open to next Tuesday, June 12, the subcommittee members to submit statements or questions for the for the record for either of the witnesses, thank you both for being here.

The subcommittee hearing is adjourned.

END

Jun 06, 2018 16:12 ET .EOF

-0- Jun/06/2018 20:13 GMT

Message

From: Daigler, Matthew [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8F0D8C0CCDA4C95879141C3867DB70E-DAIGLER, MATTHEW]
Sent: 2/26/2019 9:23:19 AM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]
Subject: 1pool Enforcement Matter

Mr. Chairman,

(b)(5)

Thanks,
Matt

Matthew Daigler
Senior Counsel
Office of the Chairman
Commodity Futures Trading Commission
202-418-6712
mdaigler@cftc.gov

Message

From: CFTC Communication [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFTC COMMUNICATIONDF2]
Sent: 12/21/2018 10:17:16 AM
To: All CFTC (FTE) [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=* All CFTC (FTE)]
Subject: CFTC COMMUNICATION: CFTC Operating Status

CFTC COMMUNICATION

SUBJECT: CFTC Operating Status

The Federal government is currently operating under a continuing resolution that will expire at midnight tonight. If Congress does not extend the continuing resolution or enact additional appropriations into law, CFTC will be in a furlough status effective **Saturday, December 22, 2018**, due to a lapse in appropriations. If necessary, we will conduct an orderly shutdown of CFTC activities on Wednesday, December 26, 2018. You should not perform any work from Saturday December 22, 2018, until you perform shutdown activities on Wednesday, December 26, 2018, unless specifically instructed otherwise. Unless you are notified that you are an excepted employee you should not perform any work after completion of shutdown activities consistent with guidance you will be provided until the CFTC is again funded and open.

What does this mean?

- ***If Congress does not extend the continuing resolution or enacts additional appropriations into law, employees (including unpaid consultants, student volunteers, and foreign visitors) may not report for work, take leave, attend training, travel, or telework until funding is approved.***
 - The Chairman and Commissioners who are Presidentially-appointed and Senate-confirmed may continue to work and cannot be furloughed. 5 U.S.C. § 7511(b)(1).
 - The Whistleblower Office and the Office of Consumer Outreach may also continue to work since they have a separate source of funding.
- A small group of employees (excepted employees) have been notified that they will continue to work because their services are considered to be emergency functions which, if suspended, would imminently threaten the safety of human life or protection of property.
- You *cannot* volunteer your time by doing any work or accessing CFTC space, systems, or equipment, including voicemail, email, or monitoring a CFTC provided device while in a furlough status.
 - This includes use of CFTC equipment for personal use under the exceptions normally allowed under the limited personal use policy. These exceptions do not apply while in a furlough due to lapse in appropriations status.
- Doing so is a violation of the Anti-deficiency Act. 31 U.S.C. § 1342. Violations of the Anti-Deficiency Act carry strong sanctions against employees, including:
 - Fines up to \$5,000.00;
 - Up to two years in prison; and
 - Discipline up to and including removal from Federal service. 31 U.S.C. § 1349(a)

What will happen on Wednesday?

- Report to work as scheduled on Wednesday, December 26th, or begin telework at your normal start time. ***If you can perform all of your shutdown activities remotely, you can request episodic telework from your supervisor. Please make sure that in under "Description of Work To Be Performed" you only write "Shutdown Activities."***
- If you are not scheduled to work on Wednesday (due to leave, flex day, or part time schedule, for example) let your supervisor know as soon as possible so that other arrangements can be made to provide you with your furlough due to lapse in appropriations notice. Let your supervisor know if you will have access to your CFTC email during the first three hours of your scheduled work hours on Wednesday, December 26th.
- If there is a lapse in appropriations and you are furloughed, you will be given written notice outlining the effective date of the furlough, any right you may have to appeal, and how to know when to return to work.

- You will be given specific instructions about shutdown activities, including preparing out of office messages for voicemail and email. *Do not activate out of office messages stating that you have been furloughed until you have been notified that you are furloughed due to a lapse in appropriations.*
- You will have ***no more than three hours*** to complete shutdown activities on Wednesday, so prepare in advance as much as possible.

What do I need to do in preparation?

- If you intend to ***request outside employment*** and have not already done so, please submit your request on [CFTC Form 20](#) to [John Einstman](#) soon as possible but no later than 10:30 am on Wednesday.
- Talk to your supervisor about what activities you will need to do if a lapse in appropriations is announced in order to shutdown in an orderly manner.
- Prepare files or projects so that you are ready to resume work when the furlough due to a lapse in appropriations ends or so that they can be transferred to an excepted employee if necessary.
- Clean out your email inbox and sent items, if necessary. See the [Email Policy](#) for more information.
- Clean out unneeded voicemail messages.
- If you have training scheduled for the next few weeks, contact Andrietta Minter at x 5236 for guidance if you have not already done so.
- If you have travel scheduled in the next few weeks, contact the [travel office](#) for guidance if you have not already done so.
- Supervisors should prepare a phone tree of personal phone numbers for their staff, if they do not already have one in place, and give the information to their Division or Office Director and their business manager. The information will be used in case it is necessary to recall you during a furlough due to lapse in appropriations.

How should I handle my Time and Attendance?

- If you have not already done so, prepare and validate your timesheet for PP 25 immediately. NFC has told us that pay period 25 (with the pay for December 9, 2018 to December 21, 2018) should be paid on time.
- Supervisors must certify timesheets by COB today.
- When funding is restored, we will provide guidance regarding time and attendance procedures to address the shutdown.

Where can I find more information?

- See the [CFTC Shutdown Preparation](#) page on CFTCnet.
- We have prepared [Questions and Answers](#) addressing common concerns. You may want to print the information, as you will not be able to access CFTCnet during a furlough.
- The Office of Personnel Management (OPM) has prepared [information](#) regarding the potential furlough.

Who do I contact with Questions?

- The [Workforce Relations](#) Mailbox

Message

From: Sklar, Maggie [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SKLAR, MAGGIECA3]
Sent: 12/20/2018 4:18:32 PM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]; Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]
Subject: Fwd: SEC Office of Compliance Inspections and Examinations Announces 2019 Examination Priorities

(b)(5)

Thoughts?

Begin Forwarded Message:

From: "Securities and Exchange Commission" <sec@service.govdelivery.com>
Subject: SEC Office of Compliance Inspections and Examinations Announces 2019 Examination Priorities
Date: 20 December 2018 15:41
To: "Sklar, Maggie" <MSklar@CFTC.gov>

You are subscribed to Press Releases from the Securities and Exchange Commission. A new press release is now available.

SEC Office of Compliance Inspections and Examinations Announces 2019 Examination Priorities

12/20/2018 03:30 PM EST

The Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) today announced its 2019 examination priorities. OCIE publishes its exam priorities annually to promote transparency of its examination program and provide insights into the areas it believes present potentially heightened risk to investors or the integrity of the U.S. capital markets. This year, particular emphasis will be on digital assets, cybersecurity, and matters of importance to retail investors, including fees, expenses, and conflicts of interest.

"OCIE continues to thoughtfully approach its examination program, leveraging technology and the SEC staff's industry expertise," said SEC Chairman Jay Clayton. "As these examination priorities show, OCIE will maintain its focus on critical market infrastructure and Main Street investors in 2019."

"OCIE is steadfast in its commitment to protect investors, ensure market integrity and support responsible capital formation through risk-focused strategies that improve compliance, prevent fraud, monitor risk, and inform policy. We believe our ongoing efforts to improve risk assessment and maintain an open dialogue with market participants advance these goals to the benefit of investors and the U.S. capital markets," said OCIE Director Pete Driscoll.

This year, OCIE's examination priorities are broken down into six categories: (1) compliance and risk at registrants responsible for critical market infrastructure; (2) matters of importance to retail investors, including seniors and those saving for retirement; (3) FINRA and MSRB; (4) digital assets; (5) cybersecurity; and (6)

anti-money laundering programs.

Compliance and Risks in Critical Market Infrastructure – OCIE will continue to examine entities that provide services critical to the proper functioning of capital markets. OCIE will conduct examinations of these firms which include, among others, clearing agencies, national securities exchanges, and transfer agents, focusing on certain aspects of their operations and compliance with recently effective rules.

Retail Investors, Including Seniors and Those Saving for Retirement – Protecting Main Street investors continues to be a priority in 2019. OCIE will focus examinations on the disclosure and calculation of fees, expenses, and other charges investors pay, the supervision of representatives selling products and services to investors, broker-dealers entrusted with customer assets, and portfolio management and trading.

FINRA and MSRB – OCIE will continue its oversight of FINRA by focusing examinations on FINRA's operations and regulatory programs and the quality of FINRA's examinations of broker-dealers and municipal advisors. OCIE will also examine MSRB to evaluate the effectiveness of select operations and internal policies, procedures, and controls.

Cybersecurity – Each of OCIE's examination programs will prioritize cybersecurity with an emphasis on, among other things, proper configuration of network storage devices, information security governance, and policies and procedures related to retail trading information security.

Anti-Money Laundering Programs – Examiners will review for compliance with applicable anti-money laundering requirements, including whether firms are appropriately adapting their AML programs to address their regulatory obligations.

The published priorities for 2018 are not exhaustive and will not be the only issues OCIE addresses in its examinations, Risk Alerts, and investor and industry outreach. While the priorities drive OCIE's examinations, the scope of any examination is determined through a risk-based approach that includes analysis of the registrant's operations, products offered, and other factors.

The collaborative effort to formulate the annual examination priorities starts with feedback from examination staff, who are uniquely positioned to identify the practices, products, and services that may pose significant risk to investors or the financial markets. OCIE staff also seek advice of the Chairman and Commissioners, staff from other SEC divisions and offices, and the SEC's fellow regulators.

OCIE is responsible for conducting examinations of entities registered with the SEC, including more than 13,200 investment advisers, approximately 10,000 mutual funds and exchange traded funds, roughly 3,800 broker-dealers, about 330 transfer agents, seven active clearing agencies, 21 national securities exchanges, nearly 600 municipal advisors, FINRA, the MSRB, the Securities Investor Protection Corporation, and the Public Company Accounting Oversight Board, among others. The results of OCIE's examinations are used by the SEC to inform rule-making initiatives, identify and monitor risks, improve industry practices, and pursue misconduct.



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Message

From: Pan, Eric [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=PAN, ERIC9A2]
Sent: 12/19/2018 11:52:15 AM
To: Giancarlo, Chris [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Giancarlo, Chris2a4]; Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Bussey, Brian [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a2d0b8b95a0b46029f13ebadb73f297-Bussey, Brian]
Subject: Fwd: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18
Attachments: BOEstatement.pdf

From: "Melara, Mauricio" <MMelara@CFTC.gov>
Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18
Date: 19 December 2018 11:46
To: "Pan, Eric" <EPan@CFTC.gov>, "Wingate, Tracey" <TWingate@CFTC.gov>

Bank of England's Statement

Bank of England statement on equivalence of the future UK legal and supervisory framework for central counterparties (CCPs) and central securities depositories (CSDs)

The Bank of England welcomes the adoption today of temporary equivalence decisions by the European Commission on the future UK legal and supervisory framework for CCPs and CSDs.

The implementing acts adopted by the Commission are necessary to allow UK CCPs and CSDs to be recognised by the European Securities and Markets Authority (ESMA). In a no-deal Brexit scenario they would come into effect from 30 March 2019. Recognition would allow UK CCPs to continue to provide clearing services to their EU members, and EU banks to meet their obligations to UK CCPs.

Today's announcement is a crucial and positive step. It provides necessary clarity and addresses one of the most important financial stability risks associated with the UK's withdrawal from the EU.

It also enables UK CSDs to be recognised so that they can continue providing notary and settlement services for securities issued under EU law.

In the UK, HM Treasury and the Bank of England have already put in place a temporary recognition regime for non-UK CCPs and a transitional regime for non-UK CSDs. These will enable EU CCPs and CSDs to continue to provide services in the UK in a no-deal Brexit scenario.

The practical arrangements to implement these equivalence decisions now need to be put in place. This includes agreeing the necessary cooperation and information-sharing arrangements between the Bank and ESMA. The Bank has already confirmed to ESMA that it will provide information in line with its current obligations and those set out in the equivalence decisions.

From: Pan, Eric
Sent: Wednesday, December 19, 2018 11:08 AM
To: Melara, Mauricio; Wingate, Tracey
Subject: Re: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Thanks

On: 19 December 2018 11:05,
"Melara, Mauricio" <MMelara@CFTC.gov> wrote:

ESMA's statement: <https://www.esma.europa.eu/press-news/esma-news/esma-ready-review-uk-ccps%E2%80%99-and-csds%E2%80%99-recognition-applications-no-deal-brexite>

(b)(5)

Recognition of UK CCPs

The European Securities and Markets Authority (ESMA) is publishing this Public Statement to clarify its plans for the recognition of Central Counterparties established in the United Kingdom (UK CCPs) as Third Country CCPs (TC-CCPs) under Regulation (EU) No 648/2012 (European Markets Infrastructure Regulation - EMIR) for a no-deal Brexit scenario, where UK CCPs will become TC-CCPs as of 30 March 2019.

As previously communicated in its public statement of 23 November 2018, the ESMA Board of Supervisors supports continued access to UK CCPs, in order to limit the risk of disruption in central clearing and to avoid any negative impact on the financial stability of the EU. Therefore, ESMA aims to recognise UK CCPs in a timely manner, where the four recognition conditions under Article 25 of EMIR are met.

1. The first condition is the adoption of an equivalence decision. ESMA welcomes the Commission Implementing Decision (EU) adopted on 19 December 2018 "determining for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation 648/2012 of the European Parliament and the Council" (equivalence decision).

The equivalence decision on the UK enters into force on the day after its publication in the Official Journal of the EU. It will apply for a period of 12 months starting from the date following that on which the Treaties cease to apply to, and in, the UK (Brexit date) and only in case no agreement to extend the two year period referred to in Article 50(3) of the Treaty on European Union is reached and no withdrawal agreement is concluded in accordance with Article 50(2) of that Treaty (no-deal Brexit).

2. The second condition is that the CCPs are authorised in the UK and are subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable therein. The Bank of England (BoE) is expected to provide ESMA with a letter confirming that the UK CCPs are authorised in the UK and comply with the prudential requirements applicable in the UK.

3. The third condition is the establishment of cooperation arrangements between ESMA and the BoE. ESMA has already engaged with the BoE to create a Memorandum of Understanding (MoU) establishing the necessary cooperation arrangements for the recognition of UK CCPs, in accordance with Article 25(7) of EMIR. The MoU is in the process of being refined in order to ensure, in particular, an effective exchange of information and coordination of supervisory activities between ESMA and the BoE, in line with Recitals 12 and 13 of the equivalence decision, which is "an essential condition for maintaining the determination of equivalence" (Recital 11).

The BoE has already confirmed that it will provide information to ESMA in line with its current obligations and those set out in the equivalence decision. Based on these assurances ESMA expects that the MoU will be agreed by the end of January. The MoU, like the equivalence decision, will take effect from the date following Brexit date, under a no-deal Brexit scenario.

4. The fourth and last condition is that the UK is not on the list of third-country jurisdictions which have strategic deficiencies in their anti-money laundering and countering the financing of terrorism regimes (high-risk third countries) under the Commission Delegated Regulation (EU) No 2016/1675 (as subsequently amended) under Directive 2015/849 (which repealed Directive 2005/60/EC). ESMA has no expectation that the UK will be added to this list upon Brexit date.

The condition in the equivalence decision only concerns the exchange of information between ESMA and the BoE, which will be covered by the MoU. No other condition apart from the four described above will need to be assessed by ESMA.

Against this background, ESMA is now ready to review applications for recognition under EMIR from UK CCPs, in order to perform the administrative steps, consultation, and the assessment envisaged in Article 25 of EMIR. ESMA has already engaged with UK CCPs to solicit their applications.

To ensure continued access to UK CCPs for EU clearing members and trading venues, ESMA aims to adopt the recognition decisions well ahead Brexit date. Similarly to the equivalence decision, they will take effect on the date following Brexit date, under a no-deal Brexit scenario.

Recognition of the UK CSD

The ESMA Board of Supervisors also supports continued access to the UK Central Securities Depository (CSD), in order to allow the UK CSD to serve Irish securities and to avoid any negative impact on the Irish securities market.

Therefore, ESMA welcomes the Commission Implementing Decision (EU) of 19 December 2018 "determining, for a limited period of time, that the regulatory framework applicable to Central Securities Depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) 909/2014 of the European Parliament and the Council".

ESMA will follow a similar process as described for UK CCPs, for the recognition of the UK CSD as a Third-Country CSD under Regulation (EU) 909/2014 (CSDR) in a no-deal Brexit scenario.

From: Pan, Eric

Sent: Wednesday, December 19, 2018 9:40 AM

To: Wingate, Tracey; Gill, Michael; Giancarlo, Chris; Sklar, Maggie; Richardson, Erica Elliott; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea

Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Spoke to Chris and Mike. We will not add any new sentences. The original version stands.

Separately, the EC has now published the full legal texts of its decision today.

(b)(5)

(b)(5)

- Commission Implementing Decision determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (CCPs)
- Commission Implementing Decision determining, for a limited period of time, that the regulatory framework applicable to central securities depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (CSDs)
- Commission Delegated Regulation of 19.12.2018 amending Commission Delegated Regulation (EU) 2015/2205, Commission Delegated Regulation (EU) 2016/592 and Commission Delegated Regulation (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date at which the clearing obligation takes effect for certain types of contracts
- Commission Delegated Regulation of 19.12.2018 amending Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP

From: Wingate, Tracey

Sent: Wednesday, December 19, 2018 9:26 AM

To: Gill, Michael; Giancarlo, Chris; Pan, Eric; Sklar, Maggie; Richardson, Erica Elliott; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea

Subject: Re: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

From: Gill, Michael

Sent: Wednesday, December 19, 2018 9:15 AM

To: Wingate, Tracey; Giancarlo, Chris; Pan, Eric; Sklar, Maggie; Richardson, Erica Elliott; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea

Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

From: Wingate, Tracey

Sent: Wednesday, December 19, 2018 9:11 AM

To: Giancarlo, Chris; Pan, Eric; Sklar, Maggie; Richardson, Erica Elliott; Gill, Michael; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea

Subject: Re: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

(b)(5)

From: Giancarlo, Chris

Sent: Wednesday, December 19, 2018 9:06 AM

To: Pan, Eric; Sklar, Maggie; Richardson, Erica Elliott; Gill, Michael; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey

Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Thank you.

(b)(5)

From: Pan, Eric

Sent: Wednesday, December 19, 2018 8:55 AM

To: Sklar, Maggie; Giancarlo, Chris; Richardson, Erica Elliott; Gill, Michael; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey

Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

From: Pan, Eric

Sent: Wednesday, December 19, 2018 8:46 AM

To: Sklar, Maggie; Giancarlo, Chris; Richardson, Erica Elliott; Gill, Michael; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey

Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

From: Sklar, Maggie

Sent: Wednesday, December 19, 2018 8:42 AM

To: Giancarlo, Chris; Pan, Eric; Richardson, Erica Elliott; Gill, Michael; Daigler, Matthew; Bussey, Brian

Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey

Subject: Re: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

The EC issued what was expected, the 12 month conditional reprieve for UK CCPs and for novating legacy swaps to EU counterparties.

<https://ec.europa.eu/info/sites/info/files/com-2018-890-final.pdf>

ESMA issued this, unless there are coming out with something else later today(?), which changes the tone of the statement as it isn't about recognition but about firms providing notices to clients about pending Brexit risks and service disruptions.

<https://www.esma.europa.eu/press-news/esma-news/esma-tells-firms-provide-clients-information-implications-brexite>

On: 18 December 2018 23:24, "Giancarlo, Chris" <JCGiancarlo@CFTC.gov> wrote:

Yes. Good. Agreed. Thanks

On: 18 December 2018 20:08,

"Pan, Eric" <EPan@CFTC.gov> wrote:

Chris -

I hope you do not mind, but I would like to propose one change to the statement.

(b)(5)

(b)(5)

(b)(5)

From: Richardson, Erica Elliott
Sent: Tuesday, December 18, 2018 7:09 PM
To: Gill, Michael; Pan, Eric; Giancarlo, Chris; Sklar, Maggie; Daigler, Matthew; Bussey, Brian
Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey
Subject: Re: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Michelle Woodland, and please cc me and Donna.

On: 18 December 2018 18:04,
"Gill, Michael" <MGill@CFTC.gov> wrote:

Not a problem for me. Who do we contact when it is ready to go or edit?

On: 18 December 2018 17:47,
"Richardson, Erica Elliott" <ERichardson@CFTC.gov> wrote:

Ideally, I'd like to send this to my team tonight just so they can have it loaded and ready to go on your signal (and if we need to replace the text in the AM, we can do that too), so let me know if passing it along to my web team is an issue.

On: 18 December 2018 17:41,
"Pan, Eric" <EPan@CFTC.gov> wrote:

Attached is a clean version.

(b)(5)

Eric

From: Giancarlo, Chris
Sent: Tuesday, December 18, 2018 5:29 PM
To: Pan, Eric; Gill, Michael; Sklar, Maggie; Daigler, Matthew; Bussey, Brian; Richardson, Erica Elliott
Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey
Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Please see the further revised draft.

(b)(5)

(b)(5)

From: Pan, Eric
Sent: Tuesday, December 18, 2018 5:07 PM
To: Giancarlo, Chris; Gill, Michael; Sklar, Maggie; Daigler, Matthew; Bussey, Brian; Richardson, Erica Elliott
Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey
Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Except for adding a comma in the last sentence, these changes look good to me.

(b)(5)

(b)(5)

From: Giancarlo, Chris
Sent: Tuesday, December 18, 2018 5:05 PM
To: Pan, Eric; Gill, Michael; Sklar, Maggie; Daigler, Matthew; Bussey, Brian; Richardson, Erica Elliott
Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey
Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Thank you. Please see the attached.

JCG

From: Pan, Eric
Sent: Tuesday, December 18, 2018 4:45 PM
To: Giancarlo, Chris; Gill, Michael; Sklar, Maggie; Daigler, Matthew; Bussey, Brian; Richardson, Erica Elliott
Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey
Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

From: Pan, Eric
Sent: Tuesday, December 18, 2018 4:35 PM
To: Giancarlo, Chris; Gill, Michael; Sklar, Maggie; Daigler, Matthew; Bussey, Brian; Richardson, Erica Elliott
Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey
Subject: RE: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

(b)(5)

From: Pan, Eric
Sent: Tuesday, December 18, 2018 4:29 PM
To: Giancarlo, Chris; Gill, Michael; Sklar, Maggie; Daigler, Matthew; Bussey, Brian; Richardson, Erica Elliott

Cc: Melara, Mauricio; Musalem, Andrea; Wingate, Tracey

Subject: Statement of Chairman Giancarlo on EC's temporary and conditional equivalence 12 18 18

Dear All-

Please see this draft statement for issuance tomorrow morning.

(b)(5)

(b)(5)

Eric

Message

From: Giancarlo, Chris [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GIANCARLO, CHRIS2A4]
Sent: 6/20/2019 11:58:36 AM
To: Jones, Shonneice [/O=CFTC/OU=Washington, DC/cn=Recipients/cn=sknight]
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Yes. Good to go.

From: Jones, Shonneice
Sent: Thursday, June 20, 2019 11:48 AM
To: Giancarlo, Chris
Subject: FW: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Are you ok for me to send this?

From: Macklin, Alice
Sent: Thursday, June 20, 2019 11:05 AM
To: Jones, Shonneice
Subject: FW: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Hi Shonneice,

Gentlyt pushing this to the top of your mailbox. I'm not in on 6/21 in case you have Qs.

Many thanks.

From: Macklin, Alice
Sent: Tuesday, June 18, 2019 2:18 PM
To: Jones, Shonneice
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

(b)(5)

Shonneice,

Here are the documents.

Many thanks.

From: Jones, Shonneice
Sent: Thursday, June 13, 2019 10:03 AM
To: Macklin, Alice
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Ok, sounds good. (b)(5)

From: Macklin, Alice
Sent: Thursday, June 13, 2019 9:48 AM
To: Jones, Shonneice
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Ok; I'll send it up to you today. I'm teleworking tomorrow and off Monday. If you have Qs; just shoot me a note and I'll respond.

Take care.

From: Jones, Shonneice
Sent: Thursday, June 13, 2019 9:48 AM
To: Macklin, Alice
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Yes

From: Macklin, Alice
Sent: Thursday, June 13, 2019 9:46 AM
To: Jones, Shonneice
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

GM Shonneice,

(b)(5)

Do you want it ahead of time?

Thanks so much.

From: Jones, Shonneice
Sent: Wednesday, June 12, 2019 3:15 PM
To: Macklin, Alice
Subject: RE: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Ok

From: Macklin, Alice
Sent: Wednesday, June 12, 2019 3:12 PM
To: Jones, Shonneice
Subject: Fwd: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections

Hi there,

I will send the docs tomorrow now that this has been announced. Thx

From: "Thompson, Anthony C." <AThompson@CFTC.gov>
Subject: 2019 CFTC Announcement: Prohibited Personnel Practices and Whistleblower Protections
Date: 12 June 2019 15:08
To: "All CFTC (FTE)" <ALLCFTCFTE@CFTC.gov>, "All CFTC (Contr)" <AllCFTCContr@CFTC.gov>

Colleagues,

The purpose of this email is to ensure that all agency employees and contractors are aware of and understand prohibited personnel practices and whistleblower protections. It is important that you understand the prohibited personnel practices and whistleblower protections available to you and that you know that you have the right to be free from prohibited personnel practices, including retaliation for whistleblowing.

Below are links to information about the U.S. Office of Special Counsel (“OSC”), which is an independent agency that protects federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

The Whistleblower Protection Act of 1989, the Whistleblower Protection Enhancement Act of 2012, the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, and the Office of Special Counsel Reauthorization Act of 2017 provide the right for all covered federal employees to make whistleblower disclosures free from retaliation. “Whistleblowing” is defined as the disclosure of information that an employee reasonably believes evidences: a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or analysis. Employees have the right to be free from prohibited personnel practices, including retaliation for whistleblowing, and there are many lawful options for disclosing wrongdoing, including to management officials, the CFTC’s Inspector General, and OSC.

Additionally, in accordance with 41 U.S.C. § 4712, contractors are also protected from: reprisal for reporting suspected gross mismanagement of a federal contract or grant; gross waste of funds; abuse of authority relating to a federal contract or grant; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a Federal contract or grant.

Please review the following fact sheet, [“Your Rights as a Federal Employee,”](#) which provides detailed information on the fourteen prohibited personnel practices and employees’ rights to file complaints with OSC. Additionally, we encourage employees and contractors to review the following materials: [“Know Your Rights When Reporting Wrongs”](#) and [“The U.S. Office of Special Counsel’s Role in Protecting Whistleblowers and serving as a safe channel for Government Employees to Disclose Wrongdoings,”](#) which describe different avenues for making whistleblower disclosures and OSC’s role in resolving them.

If you have any questions regarding this notice you can contact the IG Hotline at x5510; Lauren Colon, Chief of Workforce Relations, at x5032; Bill Roberson, Senior Procurement Executive at x5367; or Jon Van Doren, Counsel, Office of the General Counsel, at x5505.

Regards,

Tony

Anthony C. Thompson
Executive Director
Office of the Executive Director, Commodity Futures Trading Commission
1155 21st Street, NW | Washington DC 20581 | Tel: 202.418.5697



Message

From: Giancarlo, Chris [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GIANCARLO, CHRIS2A4]
Sent: 5/29/2019 2:31:17 PM
To: Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]
Subject: Emailing: Remarks of CFTC Chairman J. Christopher Giancarlo at the DerivCon 2019 Conference, New York, NY U.S. COMMODITY FUTURES TRADING COMMISSION

SPEECHES & TESTIMONY

Remarks of CFTC Chairman J. Christopher Giancarlo at the DerivCon 2019 Conference, New York, NY

February 27, 2019

It is good to be back at DerivCon, or should I say, SEFCON.

Some of you may know that I had a hand in putting together the first SEFCON in 2010, along with Chris Ferreri, Julian Harding, Scott Fitzpatrick, Shawn Bernardo and Steve Merkel. My compliments to them and the WMBAA for the foresight in creating this important conference. And my compliments to ISDA and the Tabb Group for keeping it going. It is remarkable that issues in SEF trading remain so topical nine years later.

I was honoured to give welcoming addresses at SEFCONs I, II and III. And, after a three-year hiatus I gave a keynote address at SEFCON VII. Last year, I spoke at SEFCON VIII, then renamed DerivCon I. Today, I am speaking to you from DerivCon II (which is actually SEFCON IX). It is too early to tell whether I will speak at DerivCon III (SEFCON X). If so, it surely will not be as CFTC Chairman. Whatever the case, I have a feeling that the issues we discuss today will still be issues a year from now, a decade after they were addressed at the first SEFCON.

In any event, I am pleased to be here with you today and delighted to be back in New York City.

Entity Netted Notional Amounts

When I spoke to you last year, I announced some important work by the CFTC's Office of Chief Economist. That was the development of "entity netted notionals" or "ENNs," a new and more risk-based method of measuring the size of the interest rate swaps market.

I am pleased to tell you that development of ENNs continues. Recently, some of our economists have furthered the ENNs methodology to measure markets for corporate and sovereign CDS and FX swaps. If you haven't seen that work, I highly recommend you do so. You can find the published work on the CFTC website.[\[1\]](#)

Bridge Over Brexit for US / UK Swaps Markets

As you may be aware, I was in London on Monday, where the CFTC along with the Bank of England (BoE) and the Financial Conduct Authority (FCA), and with support from Her Majesty's Treasury,

issued a joint statement providing assurances to market participants on the continuity of derivatives trading and clearing activities between the UK and US regardless of the outcome of the UK's withdrawal from the EU.

To my mind, London is, and will remain, a critical global center for derivatives trading and clearing. The complex and sophisticated market infrastructure of wholesale derivatives trading and servicing that takes place in London cannot be readily replicated in any other financial center. The integrity of that infrastructure is of critical importance to the United States.

That is why the measures we announced on Monday provide a bridge over Brexit. They are meant to maintain access to that infrastructure and, more broadly, enhance the continued relationship of two of the most important financial markets in the world.

Together, the four authorities are taking measures to avoid regulatory uncertainty about the continuation of derivatives market activity between the UK and US. These measures should give confidence to market participants about their ability to trade and manage risk across the Atlantic.

It is a great credit to the decades-long cooperation between the Bank of England, the Financial Conduct Authority, Her Majesty's Treasury, and the CFTC that we are able to work together to take these steps. They include the CFTC undertaking to extend regulatory relief to UK firms that is currently granted to EU firms. This will be accomplished by issuing new no-action letters to UK market participants that confirm the continued application of existing relief to EU market participants. The CFTC also intends to grant new substituted compliance and exemption orders to confirm that existing orders directed at the EU also will be accompanied by new orders directed at the UK. Additionally, the CFTC has confirmed that UK clearinghouse currently registered with the CFTC will be able to continue providing services in the US on the same basis they do now.

Most importantly, the Bank, FCA, HM Treasury, and the CFTC will continue to coordinate closely, updating our written arrangements and cooperating on matters of regulation, supervision and enforcement.

Corresponding preparations for Brexit are also taking place at other US financial regulatory agencies, including the SEC, the US Treasury and Federal Reserve. They are all working in close contact with their British counterparts.

Finally, I wish to recognize, and express my gratitude for, the support of my fellow Commissioners at the CFTC – Commissioners Quintenz, Behnam, Stump and Berkovitz – to effect the measures presented in the statement. It is my honor to serve alongside such fine public servants. I also thank our British colleagues at the Bank of England, FCA, and HM Treasury for joining us in this important announcement.

As the saying goes, we are a people separated by a common language. This week, we showed we are united by a common goal: to support the sound functioning of vibrant and well-regulated financial markets that are the foundation of broad-based prosperity, economic freedom and human aspiration and advancement the world over.

Floor Trader Exclusion

I would like to address a long outstanding issue: the floor trader exclusion. As you may recall, when the Commission established the swap dealer definition, it concluded that "each swap that the person enters into in its capacity as a floor trader... shall not be considered for purposes of determining whether the person is a swap dealer"^[iii] if the swap meets a series of eight specific conditions.

Among those conditions, condition “(B)”, requires that the floor trader “[e]nters into swaps with proprietary funds for their own account solely on or subject to the rules of a [DCM] or [SEF] and submits each swap for clearing with a [DCO]”.^[iii]

The ambiguity of this provision – specifically, the word “solely” – has been the source of confusion since its adoption. The Commission and staff have heard from floor traders and potential floor traders, in a number of forums, seeking clarity on this point. We have received requests from potential market makers who have told us that the lack of regulatory certainty on this point has discouraged them from providing liquidity in swaps markets.

I am aware that one possible interpretation of this language could be that if a proprietary trader enters into just one swap that is off-venue or uncleared, then the floor trader can no longer enjoy the benefits of the exclusion from the swap dealer regime.

Such a construction cannot be what Congress intended when they fashioned a Dodd-Frank regime designed to promote competition, SEF trading, and improved price discovery for end users. I know that some of my fellow Commissioners have found this construction to be overly restrictive.^[iv] I believe there is support for encouraging increased trading liquidity and competitive prices on SEFs that additional floor traders may provide.

At the end of last year, I asked staff from the Division of Swap Dealer and Intermediary Oversight to develop potential solutions to this problem. They have briefed me on their preliminary recommendations and I’ve encouraged them to continue their work. DSIO staff has informed me that, should they receive a meritorious request, they are inclined to provide appropriately clarificatory no-action relief to assist registered floor traders to rely upon this exclusion. I look forward to seeing how we can make the floor trader exclusion work the way it was intended.

SEF Rule Changes

I now want to use the remainder of my time to discuss the SEF rule proposals.

In preparing to speak to you today, I went back and looked at the issues addressed at the first SEFCON in 2010. Then, the goal was to inform regulators implementing Title VII of Dodd-Frank about the distinct liquidity, trading and market structure characteristics of global swaps markets. The concern was to avoid a harsh imposition of a US-centric futures regulatory model that supplants human discretion in trade execution with overly complex and highly prescriptive rules in contravention of Congressional intent. Alas, that is exactly what happened.

A few years later, I analyzed the adverse consequences of that flawed implementation: global and national market fragmentation, industry consolidation, absence of innovation and increased trading liquidity risk and systemic vulnerability.^[v]

And, that is why last November the Commission put forward an alternative proposal. That was the proposed rule on Amendments to Regulations on Swap Execution Facilities and the Trade Execution Requirement and a Request for Comment regarding the Practice of “Post-Trade Name Give-Up.”^[vi]

The last time I was here in New York was a month and a half ago during the government shutdown. I spent a week meeting with major participants in global swaps markets, including many SEF platforms, major bank and non-bank swap dealers and market makers, and major asset managers and other buy-side institutions. Every firm I met with expressed a desire to address the new SEF proposal in good faith and in a positive spirit.

Almost all agreed that the current framework is flawed and would benefit from substantial revision. Many recognized that the status quo is too dependent upon no-action relief, staff guidance and temporary regulatory forbearance to be sustainable

There was also broad acceptance of the benefit of making SEF execution methods more flexible and making SEFs themselves more attractive to swaps market participants. There was strong interest in addressing the most burdensome and unworkable aspects of SEF compliance. And there was considerable interest in bringing more cleared swaps products into scope, if done gradually with broad market consensus.

That does not mean the proposed rules were without constructive criticism. Let me review the major concerns I heard.

New Products

Many of the firms I met with raised the process and timing of bringing new products under the trade execution requirement. In making the “made available to trade (MAT)” trading mandate co-incident with the clearing mandate, our intention was to increase the amount of swaps products traded on SEFs. I heard concerns that the proposal may inadvertently have created the opportunity for a single SEF to force market-wide SEF execution by quickly listing cleared swaps products. Some referred to this as the “Javelin Problem.” One underlying concern seems to be that some of these swaps are too illiquid to trade on SEFs.

Yet, SEFs currently list on a voluntary basis many swaps subject to the clearing mandate, but not the trading mandate. These swaps can be executed through flexible methods of execution. The SEF proposal would extend this flexible execution method approach to the broader trade execution requirement.

Despite this flexibility, I readily understand that bringing swaps subject to the clearing mandate into scope of the trading mandate should be done properly and, perhaps, in stages. It should also be done with a relative degree of consensus of buy-side, sell-side and major SEF market participants given some of the underlying concerns. I would be interested to consider comment letters that suggest minimum conditions (e.g., such as multiple SEFs listing a swap) with adequate time for SEF connectivity and on boarding before any new mandatorily cleared swap became subject to mandatory SEF trading.^[vii]

Let me make one thing clear, however. Right now, there is still a Javelin Problem. Under the current rules the problem remains that any one platform can hypothetically force a product into scope. The problem has not gone away. Maintaining the status quo means doing nothing about the problem.

Pre-Trade Transparency

Some firms expressed concerns that moving to flexible execution methods may reduce the benefits of pre-trade price transparency.

The fact is that both the existing rules and the proposed rules seek to increase pre-trade transparency. They just do so in different ways. The existing rules attempt to do so by restricting customer choice in methods of trade execution for the most liquid swaps instruments. The proposed rules seek to do so by increasing the number and range of transactions traded and executed on SEFs, while permitting flexible methods of execution consistent with the Dodd-Frank Act.

It is worth noting that electronic execution of exchange traded futures products is almost ubiquitous today. Yet, it came about through a five-decade long evolution of incremental commercial developments and technology innovations that transformed yesterday's trading pits into today's electronic futures exchanges. At all times, the impetus was the demand of market participants and the response of market operators to reduce trading costs and transaction friction. At no time did government step in and say, "Henceforth, all futures trading shall be on electronic exchanges." Instead, market evolution happened because a good idea was coupled with capable technology and mutual commercial interest with enough time to catch on and gain traction.

And yet, other derivatives asset classes with more episodic liquidity, like exchange-traded options and many swaps, continue today to trade by voice despite the availability of modern electronic trading technology. That is why the design of trading platforms and the evolution of market structure is best done by platform operators, through trial and error, customer demand, commercial response and technological innovation. Regulators will never be close enough to the heartbeat of the markets, the spark of technology or the cost of development to prescribe the optimal design of trading platforms or business methods.

Some have said that I want to bring the market back to voice trading. That is silly. The current SEF rules already allow voice trading for Required Transactions (i.e., Order Books or RFQs-to-3). I simply want to give SEFs freedom to do what Congress permitted them to do. That is, to conduct their activities through "any means of interstate commerce," and not "any means chosen by regulators." Once regulators step in and dictate who serves whom with what type of service, they are picking winners and losers. Regulators are simply not competent, nor do we have the authority to pick best methods of trade execution.

Congress knew that swaps are not traded by retail participants, but by sophisticated, institutional traders that can demand the transaction services they need without regulatory dictate. And the platform operators are not public utilities, but seasoned competitors. If there is money to be made, trading efficiencies to be achieved, customers to be served or costs to be saved, they will act.

Our SEF proposal will empower customer choice and allow SEFs to innovate to meet demand and operate trading environments that are more salutatory to the episodic nature of swaps liquidity. At the same time, it will permit a broader range of liquidity formation, price discovery and trade execution on SEFs for a greater number of swaps products. If adopted, the proposal will bring "daylight to the marketplace" by subjecting a greater number of swaps to SEF recordkeeping, regulatory supervision and oversight, just as Congress intended.

Let's be clear: restricting methods of execution has stymied market innovation and, when the next crisis comes, will exacerbate loss of trading liquidity. The status quo may well be a source of systemic risk.

Industry Consolidation

In recent remarks, my fellow CFTC Commissioner, Dan Berkovitz forecasted that permitting flexible methods of trade execution and customer choice will lead to market consolidation. Yet, such consolidation has already happened with the swaps regulations that are in place today. Before the introduction of the current SEF rules, there were more than a dozen large dealers active in serving institutional buy-side participants in U.S. markets. Today, according to information cited by Commissioner Berkovitz, the largest five dealing institutions are party to about 70% of all reported swap transactions and 80% of the notional amount traded.

In fact, upon their introduction, we were told that the current rules would address bank dealer domination in OTC derivatives^[viii] to achieve “a paradigm shift from the business models of the past.”^[ix] It is true that there has been such “a paradigm shift,” but not one that has broadened the market, but one that has concentrated it.

So, if it is market consolidation with which we are concerned – and we should be – then we should indeed revisit the current rules, under which so much industry consolidation has taken place. The status quo has failed to bring many new entrants into the swaps markets. Market consolidation should lead us to challenge the status quo, not excuse it.

Scope of Pre-Execution Communications

Participants in my New York meetings also voiced concerns with proposed restrictions on off-SEF, pre-trade communications. Our goal was to address the separation of liquidity formation and price discovery from trade execution on existing SEF platforms that took place upon the implementation of the current rules. The new proposal utilizes a carrot and stick approach by, on the one hand, making the SEF environment more salutary to all such activities and, on the other, prohibiting off-platform, pre-trade communications for purposes of SEF liquidity formation and price discovery.

In attempting to bring pre-trade communications onto registered SEFs, the proposal could potentially disintermediate essential client relationships and communications between buy-side and sell-side market participants in current non-MAT products. This was not intended. I will certainly consider comment letters that address whether the objective of encouraging the full process of liquidity formation, price discovery and trade execution to take place on SEF platforms is sufficiently furthered by the proposal's efforts to make the SEF environment more salutary to all such activities without needing to prohibit off-platform, pre-trade communications.

Yet, let me be clear on this point: the status quo means that SEFs remain little more than trade execution engines. Doing nothing means that a great deal of liquidity formation and price discovery is conducted in off-SEF environments with limited transparency and regulatory oversight. Surely, this was not what Congress envisioned for SEFs.

Impartial Access

There has been much said about the proposed changes to the standard of “impartial access.” To consider the matter, it is important to start with the underlying law. Dodd-Frank required SEFs to have rules to provide market participants with “impartial access” to the market. Yet, Dodd-Frank also allowed SEFs to establish rules regarding any *limitation* on access.^[x] The statutory reference to *limitation* on access is meaningless if SEFs are required to serve every type of market participant or operate all-to-all marketplaces. It is plain that Congress meant for SEFs to determine their own business model and service offering, so long as they treat potential customers in an impartial manner.

The new proposed rules would allow SEFs to structure participation criteria and trading practices in a manner that aligns with their own service capabilities. However, such criteria must be transparent, fair and non-discriminatory and applied to all or “similarly situated” market participants in a “fair and non-discriminatory” manner, which means that such criteria should be non-arbitrary and based on objective, pre-established requirements or limitations.

I am aware of views that the standards for “impartial access” would benefit from greater specificity. Some have suggested that permissible SEF membership criteria should relate to a member's actual market activity in particular swap asset classes and not to the member's broader commercial activities, such as banking services or direct clearing membership. I will certainly

consider public comments on whether the revisions to “impartial access” would benefit from minimum standards for SEF membership criteria that are consistent with a SEF’s right to establish such criteria under Dodd-Frank.

Again, let me be clear. The current formulation of “impartial access” has not served to prevent significant industry consolidation. The status quo offers little to recommend it against the obligation to follow the plain meaning of Congress.

Existing Equivalence Determinations

Let me address the impact of our proposal on the 2017 equivalence decision by the European Commission (EC) regarding swap trading platforms.

Since becoming Chairman, I told the EC of my intention to implement the ideas laid out in my SEF White Paper. I extended numerous opportunities to discuss any concerns during the course of the EC-CFTC agreement on trading venue equivalence. Of course, the EC has the opportunity to provide formal comments on the rule proposal and I remain in correspondence with EC Vice President Dombrovskis. CFTC staff briefed the EC staff about the proposal at the US-EU Joint Financial Regulatory Forum. By all accounts, the process we have followed in presenting the rule proposal is a model of transparency and dialogue with foreign counterparts.

I would further note that the proposal only applies to CFTC-regulated SEFs. It does not extend CFTC oversight to European MTFs or OTFs. As will be further explored in forthcoming cross-border rules, we seek to continue to be deferential to the EU trading venue regime.

Why Change the SEF Rules?

Okay, so those are the main issues that came up in my January meetings here in New York. But there was also another thing I heard from some market participants –a subtle thing that was not voiced directly, but by implication. That was regulatory fatigue. Ten years after the crisis, market participants are tired of adjusting to enormous changes in market structure driven by regulatory edict. It is understandable that they just want to get on with trading. The current rules are far from perfect, but at least they are understood. With healthy trading conditions, many market participants want to leave the status quo as it is.

I get it. I helped run a large swaps trading platform. I understand the desire for stability in regulatory structure. I understand the desire to maintain the status quo.

Still, I want to make the case that there are two crucial reasons to improve the SEF rules: risk and opportunity.

The current SEF rule framework is highly subjective and poses risk for market participants. It overly relies on a series of no-action letters, staff interpretations and temporary regulatory forbearance that are not intended to provide permanent relief. Staff in this, or a future administration that is less sympathetic to free markets, may well change or withdraw the various interpretations, guidance and compliance expectations that underpin the current framework.

Moreover, the current restrictions on methods of execution may turn out to be, by themselves, a source of trading risk during a liquidity crisis – when swaps counterparties need to be found through less prescriptive and more flexible means of execution.

On the other hand, improving the SEF rules presents opportunity – opportunity for service innovation by existing and new market entrants that has waned under the current framework. Third-party research estimates the new proposal will accelerate market innovation leading to an increase of as much as 20% in average daily notional volume on SEFs. We estimate dozens of new SEF registrants. It is the opportunity to create a regulatory framework that actually fosters innovation, entrepreneurship, competition and increased market vibrancy rather than stifles it.

Improving the SEF rules also increases the chance that the SEC will draw on the new framework in whole or in part for their security-based SEF regime. It would create a common US regulatory approach for all swaps products, reducing operational and compliance costs and risks.

Perhaps, most importantly, improving the CFTC's SEF rules to make them more compatible with the inherent trading dynamics and episodic liquidity of swaps trading will enhance markets as mechanisms for price discovery and risk mitigation. We should seek neither the most restrictive regulatory framework nor the most lenient. We should build a framework that is the best. That is what we are trying to do with the SEF proposal: create a better and more durable regulatory framework for swaps execution that will support vibrant markets and broad-based prosperity for a generation or more.

Change of Status Quo

I said at the start of my Chairmanship that my term would be marked by a return to regular order. There would be no final rules rushed through on short time frames. We would take the time needed to get them right.

And that applies to the proposed SEF rules. I have explained this to trade journalists and, yet, they continue to write breathless stories that I will race to pass these SEF reforms before I leave the Commission. That is just nonsense. I want to see the rules made right, not done under any specific time frame.

Yet, that does not mean that we should not act. We should make hay while the sun shines. We must shore up our swaps regulatory foundation now while there is willingness at the Commission to do so and while trading markets are robust, not later when they may be under stress.

You know, twenty years ago there was a CFTC chairwoman, who proposed to review US regulation of OTC swaps at a time of relatively healthy market conditions. She was harshly attacked by some who preferred the status quo (especially by fellow financial regulators in her own party). As a result, nothing was done.

If, instead, steps had been taken then to bring swaps into the traditional principles-based regime of the CFTC, we might not have had to hurriedly address it in the wake of 2008 financial crisis and implement it in as wooden a fashion as was done.

Two decades later, no one should be similarly complacent about the status quo. No one should accept it as satisfactory or sustainable.

I have put before you a proposal – and an opportunity. The proposal surely will receive a lot of comment – as it should – that should well lead to its improvement. More important is the opportunity, an opportunity to create a better framework, one that is more flexible, more durable and more supportive of deep and liquid markets.

The opportunity is at hand. It is the opportunity to improve the status quo. It is up to you – the leaders of global swaps trading markets – to take advantage of this opportunity.

And, one more thing, they say that every Chairman leaves office with a few “I told you so’s”. Please don’t let me leave the Commission with an “I told you so” on SEF trading. I would prefer not to look back in some future crisis and say that we should have fixed the SEF rules when they could have.

Conclusion

If I have been consistent in anything in my almost five years at the CFTC, it is in voicing the value proposition of derivatives trading markets as foundational to economic growth and broad-based prosperity. I have often said that the use of commodity futures, swaps and other derivatives is one of the reasons our citizens find plenty of food at stable prices in grocery stores, affordable energy to warm homes and drive cars, and steady rates to pay home mortgages and invest retirement savings. In short, derivatives provide stability and predictability to all of our lives.

As I end my five year term at the CFTC, I remain a champion and defender of free market capitalism and the disciplined and independent financial regulation that safeguards it. It remains foundational to a thriving future of human advancement and potential – a future where creativity and economic expression is a social good all by itself.

Thank you for your time and attention.

^[i] See *ENNs for Corporate and Sovereign CDS and FX Swaps*, January 2019, available at: <https://www.cftc.gov/sites/default/files/2019-02/ENNs%20for%20Corporate%20CDS%20and%20FX%20Derivatives%20-%20ADA.pdf>.

^[ii] See 17 CFR 1.3, Swap dealer, paragraph (6)(iv).

^[iii] *Id.* at (6)(iv)(B).

^[iv] Remarks of Commissioner Dan M. Berkovitz at the Commodity Markets Council State of the Industry 2019, January 27, 2019, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaberkovitz1>.

^[v] CFTC Commissioner J. Christopher Giancarlo, *Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank*, White Paper, Jan. 29, 2015, available at:

<http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

^[vi] 83 FR 61946, November 30, 2018, available at: <https://www.federalregister.gov/documents/2018/11/30/2018-24642/swap-execution-facilities-and-trade-execution-requirement>.

^[vii] Commentators may wish to reference some of the suggestions expressed at the July 15, 2015 CFTC staff industry roundtable on the Made Available to Trade process, available

at: <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/transcript071515.pdf>.

^[viii] Remarks of Gary Gensler, OTC Derivatives Reform, Atlantic Conference, Jan. 12, 2010, at:

<https://cftc.gov/PressRoom/SpeechesTestimony/opagensler-24>.

^[ix] Remarks of Gary Gensler at Swap Execution Facility Conference: Bringing Transparency and Access to Markets, Nov. 18, 2013, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-152>.

^[x] CEA section 5h(f)(2); 7 U.S.C. 7b-3(f)(2).

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Message

From: Giancarlo, Chris [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GIANCARLO, CHRIS2A4]
Sent: 5/24/2019 3:00:35 PM
To: Daigler, Matthew [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8f0d8c0ccda4c95879141c3867db70e-Daigler, Matthew]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]
Subject: Re: Whistleblower Award

Agree with your assessment. Please proceed

On: 24 May 2019 14:07,
"Daigler, Matthew" <MDaigler@CFTC.gov> wrote:

Mr. Chairman,

(b)(5)

Matt

Matthew Daigler
Senior Counsel
Office of the Chairman
Commodity Futures Trading Commission

202-418-6712

mdaigler@cftc.gov

Message

From: Giancarlo, Chris [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GIANCARLO, CHRIS2A4]
Sent: 3/29/2019 2:15:20 PM
To: Daigler, Matthew [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8f0d8c0ccda4c95879141c3867db70e-Daigler, Matthew]; Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]
Subject: Re: Enforcement Actions

Please proceed. Thank you

On: 29 March 2019 13:50,
"Daigler, Matthew" <MDaigler@CFTC.gov> wrote:

Mr. Chairman,

Two other matters have come back to the office for your final signature. They are similar to the matter Maggie just emailed you about, where Enforcement sought subpoena and other investigative powers to investigate alleged fraud.

(b)(5); (b)(7)(A)

Matt

From: Giancarlo, Chris
Sent: Friday, March 29, 2019 1:50 PM
To: Sklar, Maggie; Daigler, Matthew
Cc: Gill, Michael
Subject: Re: Enforcement Actions

Yes. Please proceed. Thanks

On: 29 March 2019 13:39,
"Sklar, Maggie" <MSklar@CFTC.gov> wrote:

Chris,

Akash (referred to below) is back in the office. Confirming ok to put your signature page in. Thanks,
Maggie

On: 05 March 2019 12:11, "Giancarlo, Chris" <JCGiancarlo@CFTC.gov> wrote:

Thank you. Please proceed

On: 05 March 2019 11:43,
"Daigler, Matthew" <MDaigler@CFTC.gov> wrote:

Mr. Chairman,

(b)(5); (b)(7)(A)

Matt

Matthew Daigler
Senior Counsel
Office of the Chairman

Commodity Futures Trading Commission

202-418-6712

mdaigler@cftc.gov

Message

From: Giancarlo, Chris [/O=CFTC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GIANCARLO, CHRIS2A4]
Sent: 3/29/2019 12:45:49 PM
To: Daigler, Matthew [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8f0d8c0ccda4c95879141c3867db70e-Daigler, Matthew]
CC: Gill, Michael [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ab6b606c58b45fe8b9174d248b3fa65-Gill, Michael]; Sklar, Maggie [/o=CFTC/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Sklar, Maggie3]
Subject: Re: Whistleblower Award

Thank you. Please proceed.

On: 29 March 2019 10:58,
"Daigler, Matthew" <MDaigler@CFTC.gov> wrote:

Mr. Chairman,

(b)(5)

Matt

Matthew Daigler
Senior Counsel
Office of the Chairman
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